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Supreme Court of the United States

OCTOBER TERM, 1964

No. 42

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MORTIMER SINGER, PETITIONER,

v.s.

UNITED STATES.

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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PETITION FOR CERTIORARI FILED MARCH 9, 1964

CERTIORARI GRANTED APRIL 20, 1964

SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1964

No. 42

MORTIMER SINGER, PETITIONER,

vs.

UNITED STATES.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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[fol. A] [File endorsement omitted]

**IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
CENTRAL DIVISION**

February, 1961, Grand Jury

No. 29518 CD

UNITED STATES OF AMERICA, Plaintiff,

v.

STEPHEN FRANCIS SINGER and MORTIMER SINGER,  
Defendants.

**INDICTMENT—Filed March 1, 1961**

[18 U.S.C. 1341—Mail Fraud]

The Grand Jury charges:

Count One

[18 U.S.C. 1341]

Beginning on or about July 1, 1957, and continuing to on or about March 15, 1959, defendants Stephen Francis Singer, also known as Larry Stevens and Steve Singer, and Mortimer Singer, also known as Ralph Hastings, devised, and intended to devise a scheme and artifice to defraud and to obtain money and property from amateur and inexperienced songwriters, lyric writers and composers (hereinafter called "said persons") by means of false and fraudulent pretenses, representations and promises.

Said scheme consisted of defendants' representation that they were operating a legitimate and well-established song [fol. B] servicing and marketing business, and that they would, in return for a service charge, be able to have songs, lyrics and other musical compositions arranged, orchestrated, edited, published, recorded, marketed and exploited

to the benefit of persons submitting to the defendants such materials.

Said persons were induced to send to the defendants money and property by means of false and fraudulent pretenses, representations and promises which the defendants well knew were false and fraudulent when made, including, but not limited to, the following:

1. That the Madhatters (a vocal group) had informed Ralph Hastings that they would be willing to record the songs of said persons at a session now being scheduled, and that they (the Madhatters) had requested that Ralph Hastings contact said persons.
2. That a Madhatters' recording of itself would develop interest on the part of publishers.
3. That the defendants would distribute records of said persons to selected radio disc jockeys and would notify record distributors as soon as the 45 rpm record of each of said persons was pressed, which pressing would be done upon the receipt by the defendants of \$94.00 for each song.
4. That the defendants would negotiate for publication of music for said persons with active, responsible publishing companies.
5. That the defendants were negotiating with a publisher that had placed under contract successful radio, television, recording and stage personalities, and that the defendants were issuing a series of song folios featuring these artists.
6. That the defendants had made available the Madhatters' recording to motion picture, radio and television studios.

Each and all of the aforesaid pretenses, representations and promises were false and fraudulent at the time they were made, as defendants well knew, and they were intended by the defendants so to be; and each and all were made in [fol. C] order to deceive and defraud the said persons.

As a further part of said scheme and artifice to defraud and for the purpose of obtaining money and property from said persons, the defendants Stephen Francis Singer and Mortimer Singer intended to, would, and did conceal from

the said persons certain material facts required for disclosure to the said persons, in order that they would not be misled and deceived by the statements made, and caused to be made, to them by the aforesaid defendants; and more particularly, the defendants intended to, would and did omit to state and furnish to the said persons material facts of the nature aforesaid, including, but not limited to, the following:

1. That the Madhatters had learned of the composition of said persons not from an independent publisher's agent as represented but from the defendants personally.
2. That amateur songwriters had not benefitted financially from their dealings with Mortimer Singer who had been engaged in the "music service" business since 1950.
3. That it was highly improbable that any of the songs submitted by said persons would be used in motion pictures.
4. That the defendants had not handled or acted as agents for "top" recording artists.
5. That the defendants, contrary to their implied representations, had never notified any of said persons as to the style of orchestration and the style of vocal arrangement best suited to the Madhatters.
6. That the Madhatters, contrary to the implied representations of the defendants, had never used any recordings of said persons as audition recordings for motion picture musicals.
7. That the defendants, contrary to their implied representations, had never successfully negotiated with any motion picture producer, television producer or radio sponsor in regards to the songs or recordings of any amateur songwriter.
- [fol. D] 8. That the Madhatters, contrary to the implied representations of the defendants, had no intention of using the songs of said persons in their appearances at night clubs or as guest artists on radio or television.
9. That the defendants, contrary to their implied representations, had no regularly retained Director of Record-

ings" who independently made the necessary arrangements at the alleged scale rate of \$87.50 for orchestration and vocal arrangement.

10. That the defendants, contrary to their implied representations, had no motion picture studios nor any arrangements with any legitimate studio equipped to produce, distribute or market motion pictures.

11. That the defendants had paid royalties to few amateur songwriters during their business operations and that such royalties in any event had not exceeded 50 cents.

12. That the label "Film-Tone Records" was not listed in any recognized trade publication or directory.

13. That the decision to publish songs by the "publisher", Eagle Pass Music Publishing Co., was not due to the Mad-hatters' musical talents, as implicitly represented by the defendants, but rather to previous arrangements made by the defendants with Dallas Eugene Turner.

On or about January 23, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to Mr. Paul Brown, P. O. Box 89, Coquille, Oregon, to be sent or delivered by the Post Office Department of the United States.

[fol. E]

Count Two

[18 U.S.C. 1341]

The Grand Jury realleges the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about June 20, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, caused to be placed in an authorized depository for mail matter a

letter addressed to Mr. Leroy Badiali, Route 70, Medford, New Jersey, to be sent or delivered by the Post Office Department of the United States.

[fol. F]

Count Three

[18 U.S.C. 1341]

The Grand Jury realleges all the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about July 15, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to Mrs. Verda Garrow, RFD #2, Morrisonville, New York, to be sent or delivered by the Post Office Department of the United States.

[fol. G]

Count Four

[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about February 10, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to Mrs. Florence K. Carlson, 920 East Chambers Street, Milwaukee 12, Wisconsin, to be sent or delivered by the Post Office Department of the United States.

[fol. H]

Count Five

[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about February 8, 1958, in Los Angeles County, California; within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to Miss Lucille Chance, 421 Chauncey Street, Brooklyn 33, New York, to be sent or delivered by the Post Office Department of the United States.

[fol. I]

Count Six

[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about October 28, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to Miss Patricia Dick, Route 2, Perry, Iowa, to be sent or delivered by the Post Office Department of the United States.

[fol. J]

Count Seven

[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about June 9, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to Mr. Johnny O. Ramsey, 210 E. Marion Street, Paris, Missouri, to be sent or delivered by the Post Office Department of the United States.

[fol. K]

Count Eight

[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about January 10, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to Mr. L. A. Shipman, 622 Morgan Street, Houma, Louisiana, to be sent or delivered by the Post Office Department of the United States.

[fol. L]

Count Nine

[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about January 10, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to Frank Wertz, 7th Street L St., Corso, Nebraska City, Nebraska, to be sent or delivered by the Post Office Department of the United States.

[fol. M]

Count Ten

[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about October 10, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and

Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to Miss Ann Young, 5906—40th Avenue, Kenosha, Wisconsin, to be sent or delivered by the Post Office Department of the United States.

[fol. N]

Count Eleven

[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about July 29, 1957, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to Mr. J. A. Brewer, 931 Border Avenue, Ellwood City, Pennsylvania, to be sent or delivered by the Post Office Department of the United States.

[fol. O]

Count Twelve

[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about September 12, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to Mrs. C. Bado, 420 Westmoreland Street, Takoma Park, Maryland, to be sent or delivered by the Post Office Department of the United States.

[fol. P]

Count Thirteen

[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about January 23, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to Miss Margarete Hardcastle, 1401 High School Street, Huntsville, Alabama, to be sent or delivered by the Post Office Department of the United States.

[fol. Q]

Count Fourteen

[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about August 2, 1957, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to Miss Audrey Hedberg, Box 176, Golden, B. C., Canada, to be sent or delivered by the Post Office Department of the United States.

[fol. R]

Count Fifteen

[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment; except those contained in the last paragraph thereof.

On or about January 9, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and

Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to Mrs. Josephine Holmes, 134 Birch Street, San Antonio, Texas, to be sent or delivered by the Post Office Department of the United States.

[fol. S] Count Sixteen

[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about February 13, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to Mrs. Hester Perkins, Box 733, DeQuincy, Louisiana, to be sent or delivered by the Post Office Department of the United States.

[fol. T] Count Seventeen

[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about July 24, 1957, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, caused to be placed in an authorized depository for mail matter a letter addressed to Mr. Paul Menchaca, 504 Thrasher Lane, Austin, Texas, to be sent or delivered by the Post Office Department of the United States.

[fol. U]

## Count Eighteen

[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about March 3, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, knowingly took and received mail matter delivered by the Post Office Department of the United States, to wit, an envelope addressed to Mr. Ralph E. Hastings, 7906 Santa Monica Boulevard, Hollywood, California, from F. T. EverSOLE, 10210 North Harrington Drive, Corpus Christi, Texas, containing an American Express Money Order in the amount of \$50.00, payable to Ralph E. Hastings.

[fol. V]

## Count Nineteen

[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about April 29, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, knowingly took and received mail matter delivered by the Post Office Department of the United States, to wit, an envelope addressed to Mr. Ralph E. Hastings, 7906 Santa Monica Boulevard, Hollywood, California, from Mr. Ray Lee, 4627 Madison Street, Kansas City, Missouri, containing a United States Postal Money Order in the amount of \$44.00 payable to Ralph E. Hastings.

[fol. W]

Count Twenty

[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about August 6, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California; defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, knowingly took and received mail matter delivered by the Post Office Department of the United States, to wit, an envelope addressed to Mr. Ralph E. Hastings, 7906 Santa Monica Boulevard, Hollywood, California, from Mr. James Justice, Box 27, Solon, Ohio, containing a personal check in the amount of \$44.00 payable to Ralph E. Hastings.

[fol. X]

Count Twenty-one

[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about June 28, 1957, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, knowingly took and received mail matter delivered by the Post Office Department of the United States, to wit, an envelope addressed to Mr. Ralph Hastings, 5634 Santa Monica Boulevard, Hollywood 38, California, from Mr. H. W. Taylor, 2935 Wylie Drive, Dallas 25, Texas, containing a personal check signed by Carolyn Taylor in the amount of \$77.50 payable to Ralph E. Hastings.

[fol. Y]

Count Twenty-two

[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about January 16, 1959, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, knowingly took and received mail matter delivered by the Post Office Department of the United States, to wit, an envelope addressed to Ralph E. Hastings, 4714 Crenshaw Boulevard, Los Angeles 43, California, from Blanche Thomas, Route 1, Box 418, Monroe, Louisiana, containing a money order in the amount of \$22.00 payable to Ralph E. Hastings.

[fol. Z]

Count Twenty-three

[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about October 23, 1957, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, knowingly took and received mail matter delivered by the Post Office Department of the United States, to wit, an envelope addressed to Mr. Ralph E. Hastings, 5634 Santa Monica Boulevard, Hollywood 38, California, from Mr. J. D. Beebe, Box 272, Higgins, Texas, containing a personal check signed by J. D. Beebe in the amount of \$94.00 payable to Ralph E. Hastings.

[fol. AA]

Count Twenty-four

[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about January 19, 1959, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer

and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, knowingly took and received mail matter delivered by the Post Office Department of the United States, to wit, three envelopes addressed to Mr. Ralph E. Hastings, 4714 Crenshaw Boulevard, Los Angeles 43, California, from Mr. Rubin Bond, 924 Winter Street, Philadelphia, Pennsylvania, said envelopes containing United States Postal Money Orders in amounts of \$15.00, \$20.00 and \$15.00 respectively, all payable to Ralph E. Hastings.

[fol. BB] Count Twenty-five

[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about July 1, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, knowingly took and received mail matter delivered by the Post Office Department of the United States, to wit, an envelope addressed to Mr. Ralph E. Hastings, 7906 Santa Monica Boulevard, Hollywood 46, California, from Mr. John R. Brown, Jr., Route 3, Hamlin, Texas, said envelope containing a personal check in the amount of \$44.00 payable to Ralph E. Hastings.

[fol. CC] Count Twenty-six

[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about November 9, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, know-

ingly took and received mail matter delivered by the Post Office Department of the United States, to wit, an envelope addressed to Ralph E. Hastings, 7906 Santa Monica Boulevard, Hollywood 46, California, from T/Sgt. Elmer M. Sutton, 3201st Food Service Sq., Eglin Air Force Base, Florida, containing a money order dated November 18, 1958, in the amount of \$87.50 payable to Ralph E. Hastings.

[fol. DD] Count Twenty-seven

[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about April 9, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, knowingly took and received mail matter delivered by the Post Office Department of the United States, to wit, an envelope addressed to Ralph E. Hastings, 7906 Santa Monica Boulevard, Hollywood 46, California, from Mrs. Leola M. Thompson, P. O. Box 446, Rifle, Colorado, containing a personal check in the amount of \$87.50 payable to Ralph E. Hastings.

[fol. EE] Count Twenty-eight

[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about July 9, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, knowingly took and received mail matter delivered by the Post Office Department of the United States, to wit, an envelope addressed to Ralph E. Hastings, 7906 Santa Monica Boule-

vard, Hollywood 46, California, from Mrs. Leola M. Thompson, P. O. Box 446, Rifle, Colorado, containing a personal check in the amount of \$94.00 payable to Ralph E. Hastings.

[fol. FF] Count Twenty-nine  
[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about January 22, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, knowingly took and received mail matter delivered by the Post Office Department of the United States, to wit, an envelope addressed to Ralph E. Hastings, 7906 Santa Monica Boulevard, Hollywood 46, California, from Mr. Joseph Genova, 1142 Elm Street, Pueblo, Colorado, containing a United States Postal Money Order dated January 27, 1958, in the amount of \$87.50 payable to Ralph E. Hastings.

[fol. GG] Count Thirty  
[18 U.S.C. 1341]

The Grand Jury realleges all of the allegations of Count One of this indictment, except those contained in the last paragraph thereof.

On or about March 7, 1958, in Los Angeles County, California, within the Central Division of the Southern District of California, defendants Stephen Francis Singer and Mortimer Singer, for the purpose of executing the aforesaid scheme and artifice, and attempting to do so, knowingly took and received mail matter delivered by the Post Office Department of the United States, to wit, an envelope addressed to Ralph E. Hastings, 7906 Santa Monica Boulevard, Hollywood 46, California, from Mr. Harry Vogtman, 224 N. Spring Street, Klamath Falls, Oregon, containing a personal money order drawn on the

United States National Bank, Portland, Oregon, dated March 14, 1958, in the amount of \$44.00 payable to Ralph E. Hastings.

A True Bill

Glenn B. Allen, Foreman.

Laughlin E. Waters, United States Attorney.

[fol. HH] [File endorsement omitted]

Walter M. Campbell, Attorney at Law, 668 South Bonnie Brae Street, Los Angeles 57, California, Hubbard 3-4170, Attorney for Defendants.

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
CENTRAL DIVISION..

No. 29518 CD

UNITED STATES OF AMERICA, Plaintiff,

vs.

STEPHEN FRANCIS SINGER and MORTIMER SINGER,  
Defendants.

TRIAL MEMORANDUM—Filed April 17, 1962

For the purpose of shortening the trial, the defendants herein make the following offers:

1. To waive their right to a trial by jury and to submit the evidence to the decision of this honorable court.
2. To stipulate that all writings and documents purporting to emanate from "Ralph E. Hastings" and bearing the signature "Ralph E. Hastings" either in typing, handwriting or mechanical reproduction did, in fact, emanate from

the firm known as "Ralph E. Hastings," and wherever pertinent were mailed through the United States mail to the addressee named therein at or about the time of the date thereon; that prepaid postage was placed thereon, and that said documents were in due course received through the United States mails by the addressee thereof, and that all of said documents may be received in evidence without further foundation of any kind or nature whatsoever.

Dated: April 16, 1962.

Respectfully submitted,

Walter M. Campbell, Attorney for the Defendants.

[fol. II]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

Criminal Case No. 29518-CD

UNITED STATES OF AMERICA,

v.

MORTIMER SINGER.

JURY VERDICT—May 2, 1962

We, The Jury in the above-entitled cause find the defendant Mortimer Singer—

Guilty as charged in Count 1

Guilty as charged in Count 2

Guilty as charged in Count 3

Guilty as charged in Count 4

Guilty as charged in Count 5

Guilty as charged in Count 6  
Guilty as charged in Count 7  
Guilty as charged in Count 8  
Guilty as charged in Count 9  
Guilty as charged in Count 10  
Guilty as charged in Count 11  
Not Guilty as charged in Count 12  
Guilty as charged in Count 13  
Guilty as charged in Count 14  
Guilty as charged in Count 15  
Guilty as charged in Count 16  
Guilty as charged in Count 17  
Guilty as charged in Count 18  
Guilty as charged in Count 19  
Guilty as charged in Count 20  
[fol. J.] Guilty as charged in Count 21  
Guilty as charged in Count 22  
Guilty as charged in Count 23  
Guilty as charged in Count 24  
Guilty as charged in Count 25  
Guilty as charged in Count 26  
Guilty as charged in Count 27  
Guilty as charged in Count 28  
Guilty as charged in Count 29, and  
Guilty as charged in Count 30 of

the Indictment.

Henry G. Sagert, Foreman of the Jury.

Dated: at Los Angeles, California

This 2nd day of May, 1962.

[fol. KK]

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
CENTRAL DIVISION  
No. 29518-CD  
(Title 18, U.S.C. 1341)

UNITED STATES OF AMERICA,

v.

MORTIMER SINGER.

JUDGMENT AND COMMITMENT—August 27, 1962

On this 27th day of August, 1962 came the attorney for the government and the defendant appeared in person and by his attorney, and the defendant making a statement in his own behalf before sentence

It Is Adjudged that the defendant has been convicted upon his plea<sup>1</sup> of<sup>2</sup> not guilty and a verdict of guilty as charged in Counts Nos. 1 to 11, and from Counts 13 to 30, incl., in the Indictment of the offense of beginning on or about July 1, 1957 and continuing to on or about March 15, 1959, defendant devised a scheme and artifice to defraud and obtain money from amateur song-writers, and at various dates between those times to various persons in various places; defendant did use the United States mails in furtherance

<sup>1</sup> Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

<sup>2</sup> Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

of said scheme to defraud them, as charged<sup>3</sup> in Counts 1 to 11, inclusive and 13 to 30, inclusive of the indictment and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of eighteen (18) months in a jail-type institution on each of Counts Nos. 1 to 11, inclusive, and said sentences to run concurrently with each other and not to exceed eighteen (18) months in all; further, on Counts Nos. 13 to 30, inclusive, imposition of sentence of imprisonment is stayed and defendant placed on probation for a period of three (3) years on condition that he obey all laws, Federal, State and Municipal, and that he pay a fine unto the United States in the amount of \$250.00 on each of said Counts Nos. 13 to 30, inclusive, said fines being cumulative and totaling \$4,500.00 (Forty-five hundred Dollars) in all. Further, that stay of execution be granted to 2 P. M. September 24, 1962; further, that period of probation on Counts 13 to 30 to run concurrently and not to exceed three (3) years in all and said probation to start at the expiration of jail-term imposed on Counts Nos. 1 to 11, inclusive.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

<sup>3</sup> Insert "in count(s) number

" if required.

\* Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law.

Leon R. Yankwich, United States District Judge.

Filed; this 27th day of August, 1962, John A. Chil-dress, Clerk, by: L. Cunliffe, Deputy Clerk.

[fol. LL]

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
CENTRAL DIVISION  
No. 29518-CD Criminal

UNITED STATES OF AMERICA,

v.

MORTIMER SINGER.

At: Los Angeles, Calif.

Present: Hon. Leon R. Yankwich, District Judge; Deputy Clerk: L. Cunliffe; Reporter: Evelyn Sweeney; U. S. Att'y, by Assistant U. S. Att'y Timothy Thornton, Esq.; Defendant present on bond; Counsel: Walter Campbell, Esq.

MINUTES OF THE COURT—August 27, 1962

Proceedings:

For sentence on Counts 1 to 11, and 13 to 30, inclusive, upon a verdict of guilty:

Counsel and defendant make statements before sentencing, argue defendant's motion for acquittal, heretofore taken under submission.

It Is Ordered that motion for acquittal be denied and defendant is committed to the custody of the Attorney General for a period of eighteen (18) months on each of Counts 1 to 11, inclusive, said sentences to run concurrently and not to exceed eighteen (18) months in all.

On counts 13 to 30, inclusive, defendant is ordered to pay a fine unto the United States in the amount of

\$250 on each count, said fines to be cumulative and not to exceed a total of \$4,500.00 in all, and further defendant is placed on probation for a concurrent period of three (3) years on each of these counts on condition that he obey all laws, Federal, State and Municipal, that he comply with all lawful rules of the Probation Officer and pay the fines imposed.

On defendant's motion, it is further ordered that bond on appeal remain at \$2,500.00 and that stay of execution be granted to 2 p.m., September 24, 1962.

John A. Childress, Clerk, By L. Cunliffe, Deputy Clerk.

(Y-8/27/62)

[fol. MM]

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 18,284

MORTIMER SINGER, Appellant,

vs.

UNITED STATES OF AMERICA, Respondent.

On appeal from the United States District Court for the Southern District of California, Central Division.

OPINION—January 6, 1964

Before: Barnes and Merrill, Circuit Judges; and Burke, District Judge.

BURKE, District Judge:

Appellant, Mortimer Singer, was tried and convicted by a jury in the United States District Court, Southern District of California, on twenty-nine counts of an indictment charg-

ing thirty separate violations of the Mail Fraud Statute, 18 U.S.C. §1341.<sup>1</sup>

[fol. NN] Counts One to Seventeen of the indictment charged "depositing" of mail in violation of Title 18 U.S.C. §1341, and counts Eighteen to Thirty charged "receiving" mail in violation of the same statute. The first count of the indictment set forth the nature of the alleged scheme and the remaining counts incorporated the details thereof by reference to Count One. The indictment charged that beginning on or about July 1st, 1957 and continuing to on or about March 15th, 1959 appellant devised a scheme to defraud and obtain money and property from amateur song writers, lyric writers and composers by means of false and fraudulent pretenses, representations and promises. The indictment further alleged that appellant falsely represented himself as the operator of a legitimate and well established song servicing and marketing business which could, and did, for a service charge have songs, lyrics and other musical compositions arranged, orchestrated, edited, published, recorded and exploited for the benefit of amateur song writers.

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<sup>1</sup> 18 U.S.C. §1341 provides:

"Frauds and swindles

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Post Office Department, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than \$1,000 or imprisoned not more than five years, or both . . ."

After the indictment was returned appellant attempted to waive a trial by jury, but was unsuccessful because of the government's refusal to consent to such waiver.

This court has jurisdiction of the appeal under provisions of §1291(1), 28 U.S.C.

There are many specifications of error upon which appellant relies. The first is predicated upon the claim that an accused has a constitutional right to waive trial by jury and that to condition the right upon consent of the government is a denial of due process as provided by the Fifth Amendment to the Constitution.

Rule 23 of the Federal Rules of Criminal Procedure provides as follows:

"(a) Trial by Jury. Cases required to be tried by a jury shall be so tried unless the defendant waives a jury trial in writing with the approval of the court and the consent of the government.

(b) Jury of Less Than Twelve. Juries shall be of 12 but at any time before verdict the parties may stipulate in writing with the approval of the court that the jury shall consist of any number less than 12.

[fol. OO] (c) Trial Without a Jury. In a case tried without a jury the court shall make a general finding and shall in addition on request find the facts specially."

Acceptance of appellant's argument necessarily requires a conclusion that the unequivocal language of Rule 23(a) requiring consent of the government before an accused may waive trial by jury is unconstitutional. Although appellant's logic is not lacking some persuasive quality we are of the opinion that constitutionality of Rule 23(a) is well settled.<sup>2</sup> In accordance with the existing authorities we find no denial of due process in this case.

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<sup>2</sup> *Taylor v. United States*, 142 F. 2d 808 (9th Cir. 1944), cert. den. 323 U.S. 723, Reh. Den. 323 U.S. 813; *Mason v. United States*, 250 F. 2d 704 (10th Cir. 1957); *Patton v. United States*, 281 U.S. 276, 312.

Other specifications of error include charges that government counsel was guilty of prejudicial misconduct in his opening statement to the jury, in the course of direct and cross-examination of witnesses and the closing argument. Appellant further contends that the trial judge made improper and prejudicial remarks during the course of the trial, made erroneous and prejudicial rulings in connection with the admission and rejection of evidence, gave erroneous instructions to the jury and failed to give necessary and proper instructions, the absence of which resulted in prejudice to appellant. Numerous examples of alleged misconduct on the part of government counsel have been cited by appellant. A review of the record requires a conclusion by this court that appellant was not the victim of such misconduct as to deprive him of a fair trial.

Many of the appellant's complaints are directed to statements of government counsel and the trial judge which took place outside the presence of the jury and which, had they been known to the jury, would have resulted in prejudice to the government's case, and probable advantage to appellant. In those situations where government counsel may have been guilty of improper examination or argument in the presence of the jury the trial judge carefully admonished the jury in such fashion as to eliminate the possibility of prejudice to appellant.

[fol. PP] Appellant contends that the trial judge made improper and prejudicial remarks which resulted in an unfair trial to appellant. Illustrations of such alleged prejudicial action fail to support the conclusion urged by appellant. The record in its entirety discloses consistent concern by the trial judge for preservation of the appellant's right to a fair trial before the jury. It should be mentioned that even if appellant's contentions were found possessed of some merit, his position at this time would be most tenuous. During the course of trial defense counsel made no objection to allegedly improper or prejudicial remarks of the trial court and allegations of such error were raised for the first time in this appeal. In general, failure to object to statements of the court and thus allow correction of error, if any, at the time precludes consideration of such remark for the first time on appeal.

Appellant charges the trial judge with the commission of error in the admission and rejection of evidence in such fashion as to result in prejudice to appellant. No persuasive examples of such rulings have been cited and we are of the opinion that rulings in regard to the admission and rejection of evidence were, if anything, more consistently favorable to the defense than to the government.

Appellant further alleges error in regard to certain instructions which are said to be prejudicial and misleading. The instructions in question, when considered in their entirety are fair and accurate. Failure of appellant to comply with Rule 30 of the Federal Rules of Criminal Procedure requiring objection to instructions before the jury retires to consider its verdict makes extended discussion of this point unnecessary. *Brown v. United States*, (9th Cir. 1955) 222 F.2d, 293 at 298.

Appellant's final criticism of the instructions given is directed to alleged failure by the court to give adequate instructions on the elements of criminal fraud. We are of the opinion that the instructions given in this regard were adequate and accurate. No objection to the instructions, as given, were made as required by Rule 30 and we find no reason, under these circumstances, to consider appellant's argument in further detail.

[fol. QQ] Appellant's attack upon the sufficiency of the evidence is not predicated upon the record. Testimony and documentary evidence introduced as part of the government's case was more than sufficient to sustain the verdict. We find no error in the order of the District Court denying appellant's motion for a new trial and supplemental motion for a new trial.

Affirmed.

[File endorsement omitted]

[fol. RR]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT  
No. 18284

MORTIMER SINGER, Appellant,

vs.

UNITED STATES OF AMERICA, Appellee.

JUDGMENT—Filed and Entered January 6, 1964

Appeal from the United States District Court for the Southern District of California, Central Division.

This Cause came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division and was duly submitted.

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

[fol. SS]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

Before: Barnes and Merrill, Circuit Judges, and Burke, District Judge.

MINUTE ENTRY OF ORDER DENYING PETITION FOR  
REHEARING—February 10, 1964

On consideration thereof, and by direction of the Court, It Is Ordered that the petition of appellant filed February 3, 1964, and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied.

[fol. TT] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. UU]

VOLUME A

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

Honorable Leon R. Yankwich, Judge Presiding.

No: 29518—Criminal

UNITED STATES OF AMERICA, Plaintiff,

vs.

STEPHEN FRANCIS SINGER and MORTIMER SINGER,  
Defendants.

Reporter's Transcript of Proceedings

Los Angeles, California

Wednesday, April 19, 1961

APPEARANCES:

For the Plaintiff: Francis C. Whelan, United States Attorney: by Timothy Thornton, Assistant United States Attorney.

For the Defendants: Walter Campbell, Esq.

[fol. VV]

COLLOQUY BETWEEN COURT AND COUNSEL

RE: SETTING FOR TRIAL

Mr. Campbell: Your Honor, the defendants are willing both to waive jury and, as I stated, we are willing to save the court's time by stipulating to all of the correspondence which is material, in which event the case will be materially shortened.

The Court: The government, of course, does not have to waive. I have always questioned the constitutionality of that provision of the Supreme Court ruling saying that the

[fol. WW] government must consent to a waiver of jury trial. The government is not entitled to a jury trial. The defendant is granted a jury trial. I always questioned it but I do not want to be the first judge in the United States to raise the point.

Mr. Campbell: Well, your Honor has been the first in a number of points.

The Court: I know. However, I never urge them not to. Ever since I was on the Superior Court and took on cases like the Talbert, McKee, Fuller, and the Richfield cases, and the like, I have never hesitated to accept a waiver. Let us have the plea and let us continue it for setting. In the meantime, you get together, and if you want to waive, I will agree to take it, and you can set it down for trial.

• • • • • • • • • • • •  
[fol. XX] Mr. Campbell: Mr. Carr desires to be heard, your Honor, on a matter of setting.

The Court: All right.

Mr. Carr: If the court please, do I understand that you refuse to waive the jury?

Mr. Thornton: Yes.

• • • • • • • • • • • •

[fol. 1]

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

Honorable Leon R. Yankwich, Judge Presiding.

No. 29518—Criminal

UNITED STATES OF AMERICA, Plaintiff,

vs.

STEPHEN FRANCIS SINGER and MORTIMER SINGER,  
Defendants.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Place: Los Angeles, California

Date: Tuesday, April 17, 1962

[fol. 2]

APPEARANCES:

For the Plaintiff: Francis C. Whelan, United States Attorney; by Timothy Thornton, Assistant United States Attorney.

For the Defendants: Walter Campbell, Esq., and Thomas T. Johnson, Esq.

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[fol. 8]

OPENING STATEMENT ON BEHALF OF THE GOVERNMENT

Mr. Thornton: If it please the Court, Mr. Campbell, Mr. Johnson, ladies and gentlemen, as Judge Yankwich has explained, this is a mail fraud charge of 30 counts.

The first count sets forth the scheme which the government must prove to your satisfaction beyond a reasonable doubt.

In order to prove the commission of a criminal offense by the defendants Mortimer Singer and his son Stephen, Counts 1 through 17 allege mailings by Ralph E. Hastings. That was the name of the company which was carrying on this business. I am going to offer some exhibits. Ralph Hastings, that is the name. You will not see the name Singer throughout this case. You will see it on some documents, but generally it will be Ralph E. Hastings.

Counts 1 through 17 refer to mailings from the Ralph E. Hastings Company through the U. S. Mail, 30 counts in the indictment. That refers to 29 people, 29 different amateur song writers. Exhibits 31 and 32 refer to two different people but they are not named in the indictment, they are what we call similar acts.

The Court will explain that to you in due time.

[fol. 9] But at any rate Counts 1 through 17 refer to mailings going to amateur song writers.

Counts 18 through 30 refer to mailings coming in. Generally it is payments, money orders or a bank money order, Postal money order, or a check, which came through the mail this way to Ralph E. Hastings in Los Angeles.

[fol. 10] All of the witnesses are from out of state. There will be little question in this case that it was a business carried on through the mail. There will be various stipulations as to the mailing.

What was the program all about?

The people who will take the stand—incidentally, through stipulations, which are agreements between counsel, we are not going to argue about this fact and that fact; we won't call the total of 29, plus 2, 31 witnesses, amateur songwriters. We will only call 14 of those people. The others we will stipulate to the correspondence, the mailing of the correspondence, et cetera.

At any rate, the people who we will call will tell you that they had written a lyric, four lines or eight lines of poetry. In a magazine, or through some contact, generally they were contacted by one of two companies, Hollywood Tunesmiths or Music Makers, both Los Angeles businesses. Their proposition was that they would take their lyric and put a melody or music with it, so then you would have a short little song, and they would get a lead sheet back,

which is just the scale and words under it, and a melody. Very similar. Not like the sheet of music you buy in the store. It didn't have the three staves. Just the one staff, melody, and the words under it. Simple.

That's the frame of mind. These people now have [fol. 11] their four-line poetry or their eight lines set to a little, simple sheet. These companies were not operated by the defendants. Now we get the correspondence from Ralph E. Hastings. You are sitting at home, you get your lead sheet, and you get a letter on this masthead (indicating). Once this trial begins and you hear all the evidence—incidentally, as Judge Yankwich advised you, the evidence is not what I say, but what the witnesses say and the exhibits he allows to go into evidence. If the court allows it, then you consider it. But once you have considered all this, you can't go back to the original state you are in right now.

Consider yourself as an amateur songwriter with one lead sheet which has been prepared for you with a melody. This is the first two opening paragraphs I want to read to you:

"The Mad Hatters have informed me that they are willing to record your song with orchestra at a session now being scheduled and have requested that I contact you for the necessary permission. I am the Mad Hatter's personal manager."

The next paragraph:

"As I understand, the song which The Mad Hatters refer to is one of your compositions they learned of from a publisher's agent who is either handling your song; or has handled it in the past. The title of the composition is [fol. 12] TOMORROW IS MY WEDDING DAY."

And then the letter went on. There is no mention of any money in this. It just goes on, the Mad Hatters want to get your permission, and Ralph E. Hastings is writing to you to find out if you will go along with that. This is the key thing. The Mad Hatters want to record.

Next-to-the-last-paragraph: "For the recording session we will need two more copies of the song, an orchestra arrangement and a vocal arrangement for The Mad Hatters. I am enclosing recording and agent's agreements which must be signed before we can proceed."

And attached is an agreement in which they are going to get 10 per cent of the royalties, of all moneys you receive from motion pictures, television or radio sponsor use of said recording. Then your name, the amateur songwriter's name is on it, and the name of the song. That is signed by Ralph E. Hastings, when you receive it.

Also you get in that opening letter this little brochure of The Mad Hatters.

Who are The Mad Hatters? Perhaps you have never heard of them before. You want to know who are The Mad Hatters. You look at that and you see "Successful on Tour! The Mad Hatters Personal Manager: Ralph E. Hastings."

You see: "Motion Picture Credits," "Annie Get Your Gun," "Three Little Words," "With a Song in My Heart," [fol. 13] "Jane Russell," "Ella Logan—Terrific," "Marilyn Monroe," "Charles Coburn," "Recently: Desert Inn • Las Vegas • Bally's," "Colgate Comedy Hour with Jimmy Durante."

Incidentally, this scheme is mid 1957 through early 1959. Most of the correspondence you will be dealing with is 1958, but it goes from mid '57 through early '59.

"Colgate Comedy Hour with Jimmy Durante," "Ford Theatre."

This is what you hear. You had a little song, and you had music put to it. Now you get an offer from The Mad Hatters, a very impressive leaflet. No mention of money, but they need an orchestration and vocal arrangement. The last paragraph will give you an indication of what is coming:

"If you do not have an orchestration and vocal arrangement of the song, or if you find any difficulty in obtaining them, advise me by air mail and I will attempt to make the arrangements here."

So you advise them you don't have that, because all you have is the one little sheet. That is not an orchestration and it is not a vocal arrangement.

The defendants receive your name, the information of what you had from the previous company. All right. So the next letter: "Your communication advises that you do

not have an orchestration nor vocal arrangement. It will, [fol. 14] of course, be necessary to have both \*\*\* for the Mad Hatters \*\*\*.

"The Director of Recordings"—not mentioned by name.  
Who is it?

"The Director of Recordings has been informed of your advice that no orchestration nor vocal arrangement is available."

You can get it for \$87.50.

The first letter, you don't have any mention of money except the statement that you get 90 per cent of everything.

Your initial investment is \$87.50.

Now, what didn't the amateur songwriter know? What are you people going to hear today?

First, this New Mad Hatters Trio did not sing any professional dates. They never appeared on television, they never appeared on radio as a group, as The New Mad Hatters Trio.

There was at the time you received this material a group that had been disbanded, a Mad Hatters male quartet.

Both of these gentlemen pictured here, Mr. Moody and Mr. Tippe were members of that original quartet. These credits do not apply to the Mad Hatters Trio. The top two figures are Mr. and Mrs. Tippe, husband and wife, both professional singers, and Mr. Moody, who is a professional [fol. 15] singer. But they never sang as a group publicly.

There is a man by the name of Sanford Dickinson who originally operated the Ralph E. Hastings Company with Mortimer Singer. In 1958, the summer of 1958, Mr. Dickinson became sick, confined to the Sawtelle Hospital. I believe the date is August 18, 1958, that he died. At that time Mr. Singer brought in Stephen Singer, his son, to help him run this company. The arrangements that these three people had with Mr. Dickinson, with the successors, were that they would sing a song dubbed to a tape. They never saw the orchestra. They would come into a studio and a tape was played and they had the lead sheet there, and then they sang the song for two dollars apiece for the three of them.

They would sing any song. They didn't request that they go out to Mr. Shipman and get Tomorrow Is My Wedding Day. They said, "We will sing any song you bring us."

Let me read again, now:

"The Mad Hatters have informed me that they are willing to record your song \*\*\* and have requested that I contact you for the necessary permission."

This whole scheme will show what you were offered was the exploitation, commercial exploitation of your song. The Mad Hatters' agreement was that somebody out—in this case Louisiana—wants to have his song sung to a record by a professional. Not that he wanted it exploited commercially, but just wants to have it for his friends, to have one record so that he can show his friends, "This is my song put on a record."

Is that significant?

We will show that for the union scale rate you can't record for two dollars a song, but you can for something that was a private negotiation, where it is not going to be used commercially.

Would you have bought, if you were the amateur songwriter, if you had known all of that information—

Mr. Campbell: Just a minute. I object to the argument.

The Court: That goes beyond an opening statement. You are now arguing your case. Just state what you are going to prove.

Mr. Thornton: After the \$87.50 for the arrangement, if you sent that in—let me say, first, if you didn't send it in, you were sent another letter which offered you, offered to you for \$44 to have the same thing with Ken Starr.

Who is Ken Starr? We don't know. The government will call witnesses from the American Federation of Musicians, from Allied Television, Motion Picture Artists, several other guild organizations of that nature. They never heard of him.

[fol. 17] Somebody is on the record, somebody sang it. We don't know who.

The Vincent Poli Orchestra was supposed to be the orchestra. We will have similar negative evidence. People who you would expect to know these people don't know them.

There was an orchestra that recorded it, but who were they?

If you didn't go for \$87.50 for the Mad Hatters, you were then offered \$44 and you would hear Ken Starr.

That is sort of the first plateau. Then the next step in the program was a form letter which advised you:

"As we both understand, you are not required or obligated to expend any further moneys for the development specified in the agreement which covers the recording by the Mad Hatters, and the availability of that recording to motion pictures, television, and radio.

"The song has been recorded by The Mad Hatters, and is in our opinion a very fine recording. If successfully placed in a picture, The Mad Hatters recording could assist the song in the road toward success."

Well, going back, we will show that The Mad Hatters were not appearing in pictures, this Mad Hatters trio was not appearing in pictures, and had no intention of appearing in pictures. They did not know it was being used commercially.

[fol. 18] This letter goes on to advise, and you get to what is coming:

"To put out the popular 45 rpm speed, using two songs on each side of the record, \* \* \* we can have the masters, stampers and pressings completed, pressing an original 100 records at a cost to you of \$94.

"After the original 100 records are pressed, we plan to contact disc jockeys and record stores. We will then send the selected disc jockeys a recording and the music stores a notice that commercial records of the song are ready and available to be put on sale. The record manufacturer is then in a position to fill orders at the standard wholesale rate."

\* They emphasize the royalties again, 90 per cent for you and 10 per cent for us.

\* "If you desire that this be done," let us know.

All right. If you send in your money, then you have got what you requested. The 100 records didn't necessarily go to you.

Were they sent out? The government does not know.

That doesn't say they weren't.

We just don't know if they were sent out.

If you requested four or six, you got six or four, whatever you requested.

Suppose you did not immediately accept that, then [fol. 19] you received a telegram about two weeks or a month later. I don't have one immediately available, but it started out with the name of your song, it said, "Active responsible publishing company interested in your song, but they must get the pressed records first." Then a reiteration: Please send the \$94 for the hundred records. If you can't send that, send 50 and we will get under way immediately.

Who was the active, responsible publishing company that was interested in exploiting your record? The name was the Eagle Pass Music Publications. It was operated by Dallas Eugene Turner. He will be called as a witness.

It is the government's position that this was part and parcel of the Mortimer Singer operation and was not a separate, arm's-length negotiation with the publisher.

What proof do we rely on for that?

The evidence we have of that will be the Standard Songwriter's Contract.

In the Ralph Hastings letter there is no mention by name of who that publisher is, but the time sequence will check out the correspondence. Immediately you get the correspondence from Eagle Pass Music Publications signed by Dallas Turner and you get a contract, a Standard Songwriter's Contract with Dallas Turner's name on it, and then you sign it and return one copy and keep one. Then you get a form letter from Ralph E. Hastings which advises you: [fol. 20] Well, now that you are dealing with a publishing company, don't deal with us any more, because we are all done, we did everything we were supposed to do and you should contact him.

Once again that is on a form letter. This is, Now that you are dealing with somebody else, don't write to us.

"Inasmuch as your song, recorded by the Hastings Company, has been placed under publication contract, in which you have transferred certain rights to the publisher, the six months percentage recording contract executed by you and R. E. Hastings is automatically terminated.

"With our understanding and agreement, you were allowed to enter into" this new contract.

"In view of the fact that the song is now under publication contract, all further negotiations and correspondence should be handled directly between you and your publisher."

The question is, was there somebody you could talk to or write to? Will Eagle Pass accept your letters?

This is evidence you will consider.

I think it was in February 1959 from Dallas, Texas, post cards were mailed out.

Remember this contract with Eagle Pass was signed by Dallas Turner in Los Angeles, California. February 1959 everybody received a post card postmarked Dallas, Texas. [fol. 21] No signature, but the stamp on it as the name who sent it out was Emil Julius Henke.

#### **"Important Announcement:**

"We are now under new ownership and management. We are also affiliated with Movieland Music Company, Tex-San Publications, All Glow Music and Warrior Records.

"Our new address is: Eagle Pass Music Publications, San Antonio, Texas.

"All correspondence should be directed to this office and Eagle Pass Music Publications will continue to publish the finest native American music.

"Cordially, Eagle Pass Music Publications by Emil Julius Henke, Manager."

What happened to Dallas Turner?

That is February.

In May, those witnesses who retained their correspondence will produce on pink stationery a letter from George Apple, President, Denver, Duke & Jeffrey Null, Inc., which says: We picked up all the rights of Eagle Pass, and you deal with us now, and we will let you know. Don't bother us.

That type of literature.

[fol. 22] That's in May of 1959. That is postmarked an Illinois corporation in Chicago.

So in a short period of time you go from Los Angeles to San Antonio to Chicago. You originally started with Ralph E. Hastings. Who do you write to to find out just what has happened? Why do we say Mr. Singer? Mr. Singer is of the Eagle Pass Publications. We will bring in the original plates that were printed which Mr. Singer ordered and paid for for the Eagle Pass Publications.

Incidentally on our order of proof will be the fourteen amateur songwriters. That will be with the Court's approval: If the Court allows it we will call them out of order.

Generally you will hear all the amateur songwriters case first, and the rest of the case, secretaries who answered the mail, who received the mail, printers who printed up the literature, bank accounts, and that kind of thing, and the Mad-hatters.

The last witness will be James Carlyle Berg. Mr. Berg was engaged in dealing with amateur songwriters with Mr. Singer for the period of mid '55 through 1957. The business transactions engaged in by Mr. Berg and Mr. Singer are not part of the indictment. The question before the jury is fraudulent intent. The Court allows this, it does allow it, just on this issue. Once you have found the scheme then you may look to Mr. Berg's testimony just as to Mortimer Singer's to determine whether this you think was fraudulent intent.

[fol. 23] At any rate Mr. Berg and Mr. Singer are engaged in the operation of some three companies from '55 to '57. The first one was the Winston Royal Publishing Company. That also dealt with amateur songwriters. They offer publications and saleable sheet music and artists' copies of your lyric for \$75. The government will present evidence of misrepresentations that went back and forth with that correspondence.

The second company was Melody Masters. The initial contact made with the amateur songwriter was by postcard advising him he could have a free melody arrangement and get a \$250 cash prize if his melody was of sufficient quality. After he sent in that then he was sent back and he was offered the same literature and once again we will show the misrepresentations by that company. It was an offer of \$32.

of an amateur songwriter and commercial printing of 200 lead sheets, and distribution of the copies nationally.

If you didn't go for the \$32 offer then there was a \$24 offer plus ten percent of the royalties to Mortimer Singer.

Then the third company was the Thomas and Berg Company, Royal Melody Masters, and then Thomas and Berg. Thomas and Berg offered to make a master record of the amateur songwriter's song, which would contain two versions of the song; and one side a trio and vocalist, on the other side an orchestra and a vocalist. The initial price was \$72. If they didn't take that first offer that was dropped to [fol. 24] \$36 and 10 percent of the royalties. If you didn't accept that it was \$22 and 15 percent of the royalties to go to Singer.

Mr. Berg will go into the literature involved with those companies. Those companies sent out solicitations.

So, ladies and gentlemen, that's about it. There will be very little question about the mailing in this case. As I see it there are two ultimate questions which you are concerned with. First, was this a fraudulent scheme, and secondly would the defendants be responsible.

Incidentally, when a mailing goes out, the defendant doesn't have to personally sign it. If he is instrumental in causing that mailing to go out, that is sufficient. These will be facsimile signatures. I think if you direct attention to those things the evidence will fall in order and make sense.

First, was it a fraudulent scheme, and secondly, are these two men in charge responsible.

\* \* \* \* \*

[fol. 47]

#### COLLOQUY BETWEEN COURT AND COUNSEL

(Whereupon, the following discussion took place in chambers between Court and counsel. The defendants were present, the clerk present and the reporter present.)

The Court: There are certain cases, gentlemen, which are standard because they lay down a fundamental principle. They are awfully hard to come by. If you ever wrote as much as I have you will find how difficult it is to find one that states general principles, especially in these later

years when judges do not do their own thinking, when the judges have law clerks just out of law school write their opinions. In the old days before they had law clerks who wrote opinions for the Appellate judges, the judges rationalized their thinking.

One of the leading cases on fraud, in fact it was a mining fraud, was Southern Development Company versus Silva. I had the Silva right, I didn't have the plaintiff right. If I [fol. 48] looked at this book of my own composition I would have found it, but I didn't. It is Southern Development versus Silva, 125 U. S. 247. It is a suit in equity to set aside a contract relating to a mining property. It was written by Mr. Justice Lamar. You remember probably he had a very distinguished career, one of the few confederate soldiers who ever became a Justice of the Supreme Court.

While this was a civil case the principle is the same. I want to read the statements of what is necessary to establish fraud.

"In order to establish a charge of this character, the complainant must show by clear and decisive proof—

First. That the defendant has made a representation in regard to a material fact;

Secondly. That such representation is false;

Thirdly. That such representation was not actually believed by the defendant, on reasonable grounds to be true;

Fourthly. That it was made with intent that it should be acted on;

Fifthly. That it was acted on by complainant to his damage;

And Sixthly. That in so acting on it the complainant was [fol. 49] ignorant of its falsity, and reasonably believed it to be true."

Some of these elements like damages are not material in fraud, but belief and truth of a statement are elements of proof, for if the man does not believe the statement to be true then there is no fraud. I still believe, however, that

the question shouldn't be asked in that form. Then it continues:

"The first of the foregoing requisites excludes such statements as consist merely in an expression of opinion or judgment, honestly entertained; and, again, (excepting in peculiar cases) it excludes statements by the owner and vendor of property in respect to its value."

Now we have a California case which is a leading case, Oppenheimer versus Clunie, 142 Cal. 313 at page 318. The Court adopted the definition from Southern Development Company versus Silva, and then made this additional statement:

"The Court said in Colton versus Stanford, 82 Cal. 399: A. A misrepresentation as the basis of rescission must be material; but it can be material only when it is of such a character that if it had not been made the contract would not have been entered into. The misrepresentation, it is true, need not be the sole cause of the contract, but it must be of such nature, weight, and force that the Court can say [fol. 50] "Without it the contract would not have been made."'"

That is the essence of fraud.

And while damage is not necessary in a criminal fraud the other elements are still necessary. So I think that these questions that are propounded with the modifications suggested are proper questions.

Mr. Campbell: May I just speak a moment?

The Court: Yes.

Mr. Campbell: I do not think there is any essential difference between your Honor's thinking and what I'm thinking. I apparently am not expressing myself well. I do not think that there is any question but that reliance so far as civil fraud is concerned that possibly criminal fraud is an element, that the person believed the statement that was made to him.

The Court: Yes.

Mr. Campbell: But I do not believe, and I mean it is my contention, that the person to whom the statement is made in a criminal case where it doesn't matter actually in a

criminal case whether the victim so-called relied or not, I mean he doesn't have to ever have invested any money, for if it was a scheme calculated to defraud the offense has been committed with the mailing. We are in agreement on that, I think, whether he ever put in a dime or not, whether the victim relied upon it.

[fol. 227] MARGARETTE FRANCIS HARDCastle, called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your full name?

The Witness: MargarettE Francis Hardecastle.

The Clerk: M-a-r-g-a-r-e-t-t-e?

The Witness: Yes.

Direct examination.

By Mr. Thornton:

Q. What is your occupation, Mrs. Hardcastle?

A. Housewife.

Q. Where is your home?

A. Bowling Green, Kentucky.

Q. Did you ever have any business dealings with Ralph E. Hastings Company?

A. Yes, I did.

Q. Do you know approximately what year?

A. Yes, I do. It began in January of 1958.

Q. What was the nature of your business with them?

[fol. 228] A. Well, I had—Music Makers had put the music to a song; I had written the lyrics and they had put the music to it, so he contacted me by letter that the Madhatters wanted to record my song.

Q. Did you have your song recorded by Ralph E. Hastings Company?

A. Yes, I did.

Q. Who were the artists or the vocal group on it?

A. The Madhatters.

Mr. Thornton: May I have this marked next in order, your Honor?

The Court: All right.

The Clerk: 37, Plaintiff's Exhibit for identification.

(The exhibit referred to was marked as Plaintiff's Exhibit No. 37 for identification.)

Mr. Thornton: I present it to counsel for examination.

Q. Mrs. Hardcastle, I want to show you Plaintiff's Exhibit 37 for identification and ask you to tell me what that is.

A. That is the song that I wrote the lyrics to, and Music Makers put the music to it.

Q. The Music Makers of what city?

A. Los Angeles. Hollywood, rather.

[fol. 229] Q. How did you receive this? By mail?

A. By mail, yes.

Q. I now want to show you the contents of Plaintiff's Exhibit 13. I show you first the letters which are enclosed in envelopes with the stamp "Ralph E. Hastings"; can you identify that material?

A. Yes, I can. They are all mine from Ralph E. Hastings.

This is the first one that he wrote me, (Indicating), which is when I lived in Huntsville, Alabama, and I didn't receive it until I moved to Bowling Green.

Q. And the rest where did you receive?

A. All these I received from Los Angeles, from Ralph E. Hastings, in Bowling Green.

Q. When you were living in Bowling Green?

A. That's right.

Q. I show you a telegram; can you identify that?

A. Yes, I can. The telegram was sent to me in May, but I don't remember the exact date. In 1959, I do believe.

Q. Here is a date up here (indicating). Can you read that?

A. Yes, I can. Do you want me to read it?

Q. Just the date.

A. June 13, 9:00 a. m. Is that right?

Q. And the year?

A. '58.

[fol. 230] Q. I show you an envelope here which is unopened. Do you recognize that?

A. Yes, I do. This is a letter that I had written to Mr. Hastings after he had sent me four records, and that was all I ever received. And so I wrote to him asking him what had happened. And so the letter—

Mr. Campbell: I am going to object to the contents of the letter.

The Court: I beg your pardon?

Mr. Campbell: I object to the contents of the letter, it's an unopened letter.

Mr. Thornton: We are not offering the contents of the letter.

Mr. Campbell: But the witness is describing the contents.

The Court: Strike that out. The letter not having been received the contents are immaterial.

By Mr. Thornton:

Q. Approximately when did you send that letter?

A. March of '59.

Q. Now I want to show you two checks. Can you identify those checks cancelled?

A. Yes, I can. They're checks, that my husband wrote out to Ralph E. Hastings for me.

Q. Would you tell us the amounts on the check and the date on each check?

[fol. 231] A. The first check was February the 21st, 1958 for the amount of \$87.50. The second check was November 17th, 1958 for \$47.00.

Mr. Campbell: We will stipulate that they were received and negotiated.

Mr. Thornton: So stipulated.

Your Honor, I move to introduce into evidence Plaintiff's Exhibit 37, the sheet of music, and the contents of Plaintiff's Exhibit 13 that the witness has identified.

Mr. Campbell: As to the contents of what you refer to as Exhibit 13 I have no objection, and will stipulate that anything bearing the imprint or signature of Ralph Hastings can be admitted into evidence.

The Court: He has been in the habit of removing everything else.

Mr. Campbell: I assume he has removed everything else.

The Court: You will remove the unopened letter.

Mr. Thornton: I want to put the letter in sealed. I want to put the letter in for the postmark and the day it was sent.

Mr. Campbell: I object to that.

Mr. Thornton: Not the contents.

Mr. Campbell: I object to that, it's immaterial.

The Court: She testified to the date on which she wrote it.

[fol. 232] Mr. Thornton: All right, I will remove that.

May it be received?

The Court: It may be received.

The Clerk: 13 and 37 in evidence.

(The documents referred to were marked as Plaintiff's Exhibits Nos. 13 and 37 for identification and were received in evidence.)

By Mr. Thornton:

Q. Referring to this first letter, I'll remove the contents, it is a letter dated January 23rd, 1958, and one copy of an agreement dated January 23rd, 1958, the title of the song "Wheelchair Blues", and also a leaflet relating to the Mad-hatters Trio. How many copies of the agreement did you receive, Mrs. Hardeastle?

A. Just the two. I sent one back and kept one.

Q. What was your understanding that you were to do as part of the agreement, and Mr. Hastings would do as part of the agreement.

A. Well, the way I—

Mr. Campbell: Just a minute. That is objected to. The agreement speaks for itself, if the Court please.

Mr. Thornton: It does if the meaning—

Mr. Campbell: It is not a question of reliance, it's a question of what the contract or agreement calls for.

Mr. Thornton: Would you like to examine it, your Honor?

We say on ambiguous agreements and the witness should [fol. 233] say how she understood the ambiguity.

Mr. Campbell: It's the same agreement which is used in each case.

The Court: There is no ambiguity in this agreement requiring interpretation.

Mr. Thornton: May I be heard later, your Honor, on paragraph 2?

The Court: I beg your pardon?

Mr. Thornton: There is one point that I would like to be heard on.

"An additional recording to be made available for motion picture musicals". This second paragraph, the last portion, what she understood by "being available to motion pictures."

The Court: No, it is ordinary English language "made available", which is to offer them for buying just as a newsboy makes available to you a paper on the street, you may or may not buy.

By Mr. Thornton:

Q. Referring to the leaflet which I hold in my hand, what was your understanding as to the information on that leaflet?

Mr. Campbell: May I see what document?

The Court: The Madhatter thing?

Mr. Thornton: Yes, sir.

The Court: All right.

[fol. 234] Mr. Campbell: I'm going to make the objection again, if the Court please, that it is immaterial.

The Court: I'm glad you're making the objection because we shouldn't be carrying a pig in a poke, you know, a general objection that was made yesterday that may not be valid five days from now. The objection is overruled.

By Mr. Thornton:

Q. You may answer.

A. My understanding was that the Madhatters would record my song and use it in personal appearances and in a night club act, and maybe in motion pictures. That was my understanding that I thought these people would do it, the original Madhatters. That was my understanding.

Q. Did you personally ever know of the Madhatters Quartet?

A. No, I never knew them personally, but I had heard of the Madhatters.

The Court: Did it make any difference to you whether it was a trio or a quartet?

The Witness: Pardon?

The Court: Did it make any difference to you whether it was a trio or quartet?

The Witness: No, it didn't really. I just thought that it was something honest that I believed in.

The Court: Well, you heard the man testify that there was such a thing as the Madhatters, and that these three [fol. 235] people composed it at one time.

Mr. Thornton: The witness has been excluded from the courtroom, your Honor.

The Court: I forgot. I beg your pardon. All right.

By Mr. Thornton:

Q. Did you rely on the accuracy of the information on that in-making your decision?

A. Yes, I did.

Q. Would you read the two paragraphs of the opening letter "Madhatters have informed me" to yourself?

(The witness read the letter as requested.)

Q. What was your understanding as to those two paragraphs?

A. Well, it was my understanding that Mr. Ralph E. Hastings was the Madhatters' personal manager, and that he had found the song through the Music Makers, and had requested them to contact me.

Q. How many records, songs, did you send to Ralph E. Hastings?

A. Only the one.

Q. Incidentally, on that letter it inquires "If you do not have an orchestration and vocal arrangement of the song, or if you find any difficulty in obtaining them, advise me by air mail."

Did you have an orchestration and vocal arrangement of your song?

[fol. 236] A. No, I did not.

Q. Did you communicate with Mr. Hastings?

A. Yes, I did.

Q. I now show you a letter dated February 5th, 1958, and it is addressed to you and says:

"Your communication advises you do not have an orchestration."

Was that the answer to your letter?

A. Yes, that was the answer, uh-huh.

Q. This letter makes reference that the scale rate for both the orchestration and vocalization is \$87.50. Did you send that to them?

A. Yes, I did.

Q. That's the check that you have identified?

A. Yes.

Q. And did you receive an acknowledgment of receipt of your money?

A. Yes, I did. This is it.

Q. That was dated February 26th.

I show you the contents of a letter postmarked March 18th, 1959. I will stay in chronological order here. I will skip that for a moment.

I go to the next letter which you have in chronological order dated May 13th, 1958, in which Mr. Hastings advises you he had put out 45 rpm's 100 records for \$94.00. Did you [fol. 237] agree to that?

A. No, I didn't. I did not write them because I didn't have the money.

Q. Did you subsequently receive a telegram?

A. After I received the telegram.

Q. The telegram contains:

"Publisher will issue royalty publication contract direct to you, and I guarantee him records are being manufactured."

Did you receive a royalty publication contract?

A. No, I did not.

Q. Did you send any money in response to that telegram?

A. Yes, I did, after another letter. They asked for \$94.00, and I didn't have it. Then so later on they wrote me a letter and told me I could cut it, so I sent them \$47.00 for 50 records, supposed to be.

Q. Do we have that letter here?

A. It should be there, I don't know.

Q. I now show you a letter dated October 23rd, 1958. Is that the letter to which you refer?

A. Yes, this is it.

Q. Would you read the last paragraph out loud, please, that letter?

A. This—

Q. No, excuse me, the next to the last.

[fol. 238] A. You want me to read it out?

Q. Please.

A. "In order to proceed on this reduced price of \$47.00, being the cost to you for the manufacture of the records, the exploitation to disc jockeys, and listing with music dealers, we'll need a prompt reply in the enclosed air mail envelope, the reason being that we plan to distribute the next series of Film-Tone records to the disc jockeys and list three records with record dealers with the distributors before the usual retail business boom of the Christmas Holidays."

[fol. 239] Q. Did you ever receive a list of the disc jockeys to whom the records were distributed?

A. No, I did not.

Q. Did you send \$47 in response to that?

A. Yes, I did.

Q. Did you get a letter acknowledging receipt of the \$47?

A. Yes, I did. This is it.

Q. That was dated—?

A. November 21, 1958.

Q. I show you a letter dated, postmarked January 8, 1959, and I will read it.

"Our contract with you covering the recording of your song material was for a period of six months duration. The contract is now over six months old and, therefore, we have no further right to a percentage interest in same. This letter will confirm the above facts and all rights, title and interest

in the recording heretofore held by this firm is automatically assigned to you."

Had you received any royalties pursuant to the agreement you signed with these men up to that time?

A. No, I had not.

Q. Did you ever?

A. No, I did not.

[fol. 240] Q. I show you the contents of a letter post-marked March 18, 1959. Do you recall receiving that?

A. Yes, I do.

Q. What did you understand from that?

A. I understood that my record would be out, published, but I couldn't understand why my name was under it instead of the Madhatters.

Q. Did you receive any correspondence from Eagle Pass Music Publications?

A. No, I did not.

Mr. Thornton: I have no further questions, your Honor.

[fol. 251] DALLAS EUGENE TURNER called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Thornton:

[fol. 266] Mr. Thornton: I want to show that Mortimer Singer was interested in this company.

The Witness: He was never interested in this company.

Mr. Thornton (Continuing): And also that this material went through the mails.

May I offer this stipulation with counsel. The exhibits which I will identify by name, that the witness would testify similarly as to Eagle Pass Music Publications, bearing the facsimile of his signature? Subject to your objection as to materiality and relevancy.

Mr. Campbell: The witness, in response to your question —rather, the colloquy, as to the interest of Mortimer Singer,

just stated that Mortimer Singer was never interested in this company.

The Court: The jury is instructed to disregard the statement that Mortimer Singer had an interest, because this witness hasn't so testified. Nor has any other witness testified, as yet, that Mortimer Singer, or the other defendant, had anything to do with Eagle Pass. Except there was some inference that songs were sent, that people may have been referred to this company for publication.

[fol. 278] Q. To whom did you send them, do you know?

A. I don't actually recall, because Mr. Henke, you see, he was in charge of that, and recordings were sent to Mr. Henke because he had a recording company as well as an interest in Eagle Pass Music Publications, and therefore his contacts were the ones that were going to receive them. I didn't have time to handle that particular phase of the promotion, sir.

[fol. 282] By Mr. Thornton:

Q. During either 1958 or 1959 did you meet Mr. Singer in his hotel room in Texas?

A. I met Mr. Singer in Fort Worth, Texas in December of 1958, yes.

Q. Was that in the hotel room?

A. Yes, that's a common place for people to meet when they are traveling.

Q. Who else was present?

Mr. Campbell: Objected to as immaterial.

The Court: I'll sustain the objection. I can't see the materiality. The man has a right to associate with somebody else.

Q. Did you have any financial transactions, was there any money passed between you and Mr. Singer at that time?

Mr. Campbell: I'll object to that as immaterial.

[fol. 283] The Court: I'll allow the question to be asked. Go ahead, you may answer.

The Witness: I am subpoenaed here in the case of Eagle Pass Music Publications, and there was no money ever turned over to Eagle Pass Music Publications in no hotel room or any other time.

By Mr. Thornton:

Q. Did you have any financial transaction, any money passed between you and Mr. Singer in a hotel room in Fort Worth, Texas?

Mr. Campbell: I'll object as immaterial.

The Court: I'll sustain the objection. The man has a right to have a transaction in a hotel room.

[fol. 286] By Mr. Thornton:

Q. And to whom did you sell?

A. To Mr. Henke and Mr. Hufstedler, and Mr. Henke handled the transaction. I signed the bill of sale to the two of them.

Q. Do you recognize the other signatures other than your own there?

A. Yes. That's Mr. Hufstedler's signature, and also Mr. Henke's signature, sir.

Q. Do you recall—and think carefully—if you don't recall, say you don't recall. Do you recall whether or not the three of you signed at the same time?

A. No.

Mr. Campbell: Objected to as immaterial, if the Court please.

The Court: I'll allow the question to be asked, although I will say that there is no rule requiring an instrument to be signed at the same time by all parties to it. Go ahead, [fol. 287] you may answer, however.

The Witness: No, we were not all present, sir. I of course signed, Mr. Hufstedler signed this at the same time, and then it was sent to Mr. Henke for his signature.

By Mr. Thornton:

Q. Did you observe Mr. Hufstedler sign it?

A. Yes, he definitely signed it.

Q. In your presence?

A. In my presence.

STATEMENT BY THE COURT

The Court: \*\*\*

(Addressing the jury) Ladies and gentlemen; I want to issue a warning to you. When a witness is asked a question and he answers in the negative, you are not to infer, you see, that the intimation of the question is true. Where a witness answers no, then even though he is brought in by the [fol. 288] party and proves to be an adverse witness, as this witness proved to be, the only way he can prove that the contrary of what the witness testified is by offering testimony to contradict it. Until he does that the statement there remains in the record upon which you can make a finding, you can reach a conclusion as to a particular fact. In other words, inexperienced jurors sometimes overlook the fact that a clever lawyer for the government or for the defendant asks a lot of questions which he knows will be answered in the negative in the hope that he will carry the impression that the truth is not as a witness gave it, but as he intimated in the question which the witness who did not answer.

So I want to give you a warning, because this is a very dangerous type of examination. I have a right to inform you. He has a right to do it. He has a right to do it, but I warn you to pay no attention to any thought that the witness was not telling the truth, unless you believe from his testimony that he isn't telling the truth. But even if you believe he isn't telling the truth, you can't find the contrary to what he said until evidence is produced from other sources to the truth of the matter.

[fol. 473] MAX HERMAN, a witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: What is your full name?

The Witness: Max Herman.

The Clerk: All right, Max Herman.

Count!

Mr. Thornton: No count.

Direct examination.

By Mr. Thornton:

Q: Mr. Herman, what is your occupation?

A. I am the Vice-president of the Musicians Union of Los Angeles.

Q. And how long have you had that position?

A. I have been an officer for six years, Vice-president for four.

Q. Would you tell us briefly your musical background?

A. I came to California as a trumpet player with Bob Crosby. I worked for 12 years at CBS prior to my election as Vice-president.

Q. Have you done any arranging?

A. A little.

Q. Do you maintain a list of the legal names and the professional names of members of your union?

A. We do.

[fol. 474] Q. And would you tell us briefly what the membership of your union encompasses?

A. Our membership consists of 15,000 members, instrumentalists, copyists, arrangers, composers.

Q. Have you examined your records in connection with the name Ken Starr, S-t-a-r-r, for the years 1957, 1958 and 1959?

A. I have examined the records. There is no—

Mr. Campbell: Just a minute. That's objected to. This is negative testimony. Ken Starr is a singer. This is the Musicians Union of instrumentalists, people of that kind, negative testimony of this kind.

The Court: Do you include vocalists?

The Witness: We only include vocalists if they play instruments.

By Mr. Thornton:

Q. Is it common to some members or some musicians who are both vocalists and instrumentalists to register with different unions, more than one union?

A. Yes.

Q. Referring to my earlier question you have examined the records for 1957, '58 and '59?

A. I have.

Q. And is Ken Starr a member or has he been a member during that period of time in your union?

Mr. Campbell: Objected to as immaterial.

[fol. 475] The Court: I have to sustain the objection. There is no evidence that he played an instrument, and that's a condition. Mr. Dallas Turner testified that he played a guitar. But there is no evidence that Ken Starr played an instrument, and therefore he couldn't qualify for the union. So his absence in the union would be no more significant than the absence of your name or my name.

By Mr. Thornton:

Q. I know direct your attention to the name Vincent Poli. First of all are orchestra leaders members of your union?

A. All orchestra leaders are members of our union.

Q. And have you searched your records for 1957, '58 and '59 with reference to the name Vincent Poli, P-o-l-i?

A. I have, and I have not found the name Vincent Poli.

Q. Will you tell us your practice insofar as a man may use a professional name other than his legal name?

A. When a man has a professional name we use both his legal and professional name.

The Court: It is possible that a man may have an orchestra and not be interested sufficiently in a union to affiliate, isn't it?

The Witness: All professional people that work in clubs or recordings, television, radio, are all members of the union.

Non-professionals, yes, from the school boards, young people coming up, are not union people. They become union [fol. 476] people before they work professionally, usually.

The Court: I see, all right.

By Mr. Thornton:

Q. Does your union have membership including musical arrangers?

A. We do.

Q. Have you caused a search of your records for the years 1957, '58 and '59 for the name Al Terry as an arranger?

A. There is no Al Terry listed as an arranger.

Q. Is there an Al Terry listed for anything else?

A. We have an Al Terry listed as an instrumentalist.

Q. Mr. Herman, in addition to your position with the American Federation of Musicians, do you have any publishing company?

A. I do.

Q. And how long have you been in that business?

A. I've been in the publishing business since 1951.

Q. And what does the word "publishing" mean to you?

Mr. Campbell: Objected to as immaterial what it means to him.

Mr. Thornton: This man who has divided his time to this career, I think the jury is entitled to know what it means to a professional.

The Court: That isn't the question what it meant to him. What did it mean to the lay person to whom these representations were made, what were they told. You are [fol. 477] not going to substitute expert knowledge of a man to the lack of knowledge of a truck driver or a farmer to whom representations were made by holding them to a representation of the type that would be understood by Mr. Herman. The objection is sustained.

The jury are instructed to disregard questions and not to imply what the answer might be if it had been given. As I warned you before there is always a danger. Someone once said "You cannot unring a bell", and that is true. Sometimes these linger, and I want to warn you that where I

sustain objections to questions you are not to imply what the answer would have been if I had allowed it. It is my responsibility to see that improper questions are not asked, and if they are asked they are not answered. I cannot anticipate that they are going to be asked because I do not know what's in the mind of a prosecutor until he asks the question. Of course he has a right to make certain inquiry, but that's what makes lawsuits. The difference between him and me is he is a prosecutor and I'm a judge. I have to weigh the balance nice clear and true both between the government and the defendant, while he is only interested in winning a lawsuit, you see, just as all lawyers if they are good advocates are interested in winning lawsuits. Of course they want to win them by honorable means, otherwise they get in trouble.

You are not to draw any inference of what the answer would be.

[fol. 527]

#### COLLOQUY

Mr. Thornton: Your Honor, at the close of the session this afternoon may we reserve some time to argue out whether or not we will be allowed to call James Carlyle Berg as a witness this afternoon, may we argue the issue whether we will be allowed to call James Carlyle Berg?

The Court: If you tell me now, if you tell me what you want to offer. Let me say this. In all cases involving intent, similar acts may be shown as going to intent, but they must be related in point of time to the time we are talking about. And I have the law right here in front of me, the Ninth Circuit and other circuits. It must be clearly related.

Mr. Berg will not be allowed to testify that he was indicted and pleaded guilty. If you want to show that Mr. Berg knew of similar—he was a victim—I cannot see how you would bring him in.

[fol. 534] Mr. Thornton: In view of your ruling, your Honor, would you instruct the jury or explain to the jury

some things counsel said in his opening statement you have ruled against!

I made a statement in opening to the jury that I would call Berg. I request that the court give an instruction to the jury that not all things that counsel said in his open-[fol. 535] ing statement was he allowed to do because the court ruled it was immaterial.

[fol. 561] EMIL JULIUS HENKE called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

[fol. 562] Direct examination.

By Mr. Thornton:

Q. Mr. Henke, were you ever associated with the Eagle Pass Music Publications?

A. Yes, sir.

Q. Would you tell me the number of that exhibit in front of you that is on the small white sheet?

A. 39.

Q. Would you refer to the signatures at the bottom of that?

A. Yes, sir.

Q. Can you identify any of those?

A. I can identify Mr. Turner's and mine.

Q. Where were you when you signed yours?

Mr. Campbell: Just a minute. May I see that exhibit?  
[fol. 563] The Court: It is the agreement to transfer, isn't it?

The Witness: Yes.

The Clerk: It is in evidence.

Mr. Campbell: No, sir, it is not in evidence. That is why I wanted to examine it.

The Court: All right.

Mr. Campbell: May I have the question?

(The question was read by the reporter.)

The Court: Overruled.

Mr. Thornton: You may answer, Mr. Henke.

The Witness: San Antonio, Texas.

[fol. 566] Q. Did you invest any money in Eagle Pass Music Publications?

Mr. Campbell: Objected to as immaterial.

The Court: It is immaterial, unless you intend to trace it to the Singers.

[fol. 567] Mr. Thornton: Excuse me, your Honor?

The Court: Unless you intend to trace it to the Singers it is not material.

Mr. Thornton: I expect a negative answer.

Mr. Campbell: I object to counsel indicating the answer, in the face of an objection.

The Court: I have warned the jury to disregard it. Counsel doesn't know the rules of evidence.

I think between now and the next case he ought to do a little homework and learn the rules of evidence in criminal cases.

I am sincere, and I think it is my duty to warn the jury, because you are doing a lot of things that shouldn't be done by a prosecutor. You make statements of what you intend to prove when I have sustained the objection, which is wrong.

[fol. 681] REXFORD WOOLARD HUFSTEDLER a witness called by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Thornton:

Q. Mr. Hufstedler, did you ever hear of the Eagle Pass Music Publications Company?

A. Yes, sir, I have.

Q. Who was the operator of that company?

A. Dallas Turner.

Q. Were you ever a partner of Dallas Turner in the operation [fol. 682] of that company?

A. Absolutely not.

Q. I want to show you Exhibit 39 marked for identification. Is that your signature at the bottom of that sheet?

A. I didn't sign this document. This could be my signature or a copy of my signature.

Q. But you didn't sign it!

A. No, sir.

[fol. 702] STATEMENT BY THE COURT

The Court: \*\*\*

(Addressing the jury:) Ladies and gentlemen, we are about to take a recess until 2:00 o'clock. The Court admonishes you not to converse among yourselves or anyone else on any subject connected with the trial or to form or express an opinion thereon until the cause is finally submitted to you.

Once more I call your attention to the fact that a good bit of defensive matter is coming in through the witnesses produced by the government, and that is evidence in the case which you have a right to consider.

You will note that many of the witnesses say that these transactions were entirely different from what the government claims they have been. Ultimately you will have to determine, when the time comes for your verdict, which version you will accept, the version that the government places upon the transaction or the version of some of these witnesses place on the transaction. Or if a witness testifies both ways, which of the two you are going to accept.

So I warn you it is very important in this case to keep your mind open until the evidence is concluded.

The defendant incidentally doesn't have to offer any evidence at all. If the defendant wants to present the case on the basis of the facts brought out on cross examination he has a right to do so.

[fol. 703] So long as I am making that statement I want to also state that ultimately you have got to judge the case, not by what counsel for the government or counsel for the defendants have said they would prove, but what they actually were allowed to prove. You will remember that I told you that the opening statements are merely outlines of what they think they will prove. Many a time the things they say they will prove they are not allowed to prove. So that the case must be judged not by what the lawyers say, but by what the witnesses under oath said in open court.

Matters which were not testified to cannot be evaluated by you merely because the lawyer for the government and the lawyer for the defendants expected to prove it. Perhaps he wasn't allowed to prove it by the Court or perhaps on second thought he decided not to do it.

So in a case of this character that extends over a long period of time jurors forget these things. That is why I keep reminding jurors in cases of this character that what they are to determine is the truth of the charges in the indictment, and they are to do it on the basis of the proof offered in the record, not on the basis of the opening statement of either side or of arguments of counsel.

All right.

[fol. 830] MORTIMER SINGER the defendant herein, having been first duly sworn, was examined and testified as follows:

[fol. 884] Cross Examination.

By Mr. Thornton:

Q. Do you recall that that oil well—oil rights was purchased for a hundred dollars?

Mr. Campbell: Just a minute. I object to the question in that form. Purchased by whom, when, and under what circumstances?

Mr. Thornton: I will reframe the question.

Mr. Campbell: If the court please, we are going very far afield in this type of cross examination.

The Court: This is not proper cross examination. This wasn't gone into.

Supposing he bought something for a hundred dollars instead of for some \$5,000, he wouldn't be the first American who struck it rich.

[fol. 941] THE COURT'S CHARGE TO THE JURY

The Court: The law of the United States permits a judge to comment on the facts in the case. Such comments are, however, mere matters of opinion which the jury may disregard if they conflict with their own conclusions upon the facts. This for the reason that the jurors are the sole and exclusive judges of the facts in the case. However, it is not my custom to exercise this right, nor shall I exercise it at the present time. I shall leave the determination of the facts in the case to you, satisfied as I am that you are fully capable of determining them without any aid. However, it is my duty under the law, and my exclusive province, to instruct you as to the law that is applicable to the case in order that you may render a general verdict upon the facts in the case as determined by you and the law as given you by me in these instructions. It would be a violation of your duty to attempt to determine the law or to base a verdict upon any other view of the law than that given you by the Court, a wrong for which the parties would have no remedy, because it is conclusively presumed by the Court and all higher tribunals that you have acted in accordance [fol. 942] with these instructions as you have been sworn to do.

During the course of the trial I have at various times asked questions of certain witnesses, including the defendants. My object in so doing was to bring out in greater detail certain facts not yet fully testified to by the particular witness. You are not to infer from the questions I asked that I have any opinion as to the facts to which the questions related. If from those questions you have made the inference that I have an opinion as to the particular facts to which the questions related, it is your right to treat it as an opinion which you are at liberty to disregard in ar-

riving at your own conclusions as to particular facts or as to any other facts in the case.

You are here for the purpose of trying the issues of fact that are presented by the allegations in the indictment and the plea of not guilty of the defendant. This duty you should perform uninfluenced by pity for the defendant or by passion or prejudice on account of the nature of the charge against him. You are to be governed therefore solely by the evidence introduced in this trial and the law as given you by the Court. The law will not permit jurors to be governed by mere sentiment, conjecture, sympathy, passion or prejudice, public opinion or public feeling.

Both the public and the defendant have a right to demand, [fol. 943] and they do so demand and expect, that you will carefully and dispassionately weigh and consider the evidence and the law of the case and give to each your conscientious judgment; and that you will reach a verdict that will be just to both sides, regardless of what the consequences may be.

The offense with which the defendant is charged is mail fraud. In this connection you are instructed that the indictment on file herein is a mere charge or accusation against the defendant, and is not any evidence of the defendant's guilt. And no juror in this case should permit himself to be, to any extent, influenced against the defendant because or on account of such indictment on file.

It is the duty of the jury to decide whether the defendant be guilty or not guilty of the offense charged, considering all the evidence submitted to you in the case.

The jury are the sole and exclusive judges of the effect and value of the evidence addressed to them, and of the credibility of the witnesses who have testified in the case, and the character of the witnesses as shown by the evidence should be taken into consideration for the purpose of determining their credibility and the fact as to whether they have spoken the truth. And the jury may scrutinize not only the manner of witnesses while on the stand, their relation to the case, if any, but also their degree of intelligence. A witness is presumed to speak the truth. This [fol. 944] presumption, however, may be repelled by the manner in which he testified, his interest in the case, if any,

or his bias or prejudice, if any, against the defendant, by the character of his testimony, or by evidence affecting his character for truth and honesty or integrity or by contradictory evidence, and the jury are the exclusive judges of his credibility.

A witness may also be impeached by evidence that he made at other times, statements inconsistent with his present testimony as to any matter material to the cause on trial.

A witness false in one part of his or her testimony is to be distrusted in others. That is to say, the jury may reject the whole of the testimony of a witness who has wilfully sworn falsely to a material point. And the jury being convinced that a witness has stated what was untrue, not as a result of mistake or inadvertence, but wilfully and with the design to deceive, must treat all of his or her testimony with distrust and suspicion, and reject all unless they shall be convinced that notwithstanding the base character of the witness, that he or she has, in other particulars sworn to the truth.

The testimony of a witness is said to be corroborated when it is shown to correspond with the representation of some other witness or to comport with some fact or facts otherwise known or established by the evidence.

[fol. 945] You must not consider as evidence or law any statements, arguments, comments, or suggestions made by counsel during the trial. However, if counsel for either side have admitted or stipulated to the existence of any fact, you must consider it proved without further evidence.

You must not consider for any purpose any evidence offered and rejected, or which, after being received, has been stricken out by the Court. You must decide the case solely upon the evidence before you and the inferences which you may deduce therefrom, as they are stated in these instructions, and upon the law as given you in these instructions. There are two kinds of evidence by which the government may sustain charges laid in an indictment. The one known as direct and positive, the other as indirect or circumstantial. Evidence is said to be direct and positive when the witnesses have testified of their own knowledge to matters having a direct bearing upon the issues in the

case. Evidence is said to be indirect or circumstantial, on the other hand, when the witnesses have testified of their knowledge to matters having only an indirect or circumstantial relationship to the issues in the case.

While you may show what a man does by direct evidence of eye witnesses, the only way you can show what he intends and believes or what his plans or purposes are, or were, is by circumstantial evidence.

[fol. 946] The law requires that all the circumstances necessary to show guilt must, of themselves, be shown by evidence beyond a reasonable doubt, that these circumstances must all be consistent with one another, that they must all be consistent with a defendant's guilt, and that they must all be inconsistent with any reasonable theory or hypothesis except that of guilt.

If the circumstantial evidence measures up to all the foregoing requirements, it is the duty of the jury to return a verdict of guilty. If it fails to do so, in any one of such particulars, your verdict should be not guilty.

The indictment in this case returned by the Grand Jury for the Southern District of California on March 1st, 1961 is in thirty counts.

Count 1 sets forth the alleged scheme to defraud and has been read to you.

The remaining counts of the indictment incorporate, by reference the allegations of Count 1 but charge separate mailing violations.

The indictment is brought under Section 1341 of Title 18, United States Code, which provides in pertinent part as follows:

"Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Post Office Department, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or

[fol. 947]

at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be guilty of an offense."

The elements of an offense under the Mail Fraud Statute are:

First, a scheme devised with intent to defraud or for obtaining money or property by means of false pretenses, representations, or promises, and

Second, for the purpose of executing or attempting to execute such scheme, the placing or causing to be placed of any letter, matter, or anything whatever in any Post Office of the United States or other authorized mail depository to be sent or delivered by the Post Office establishment or the taking or receiving therefrom of any such letter matter or anything whatever.

[fol. 948] Each of these elements must be proved by the government beyond a reasonable doubt, as to each count, before you can find the defendant guilty of such count.

You are instructed that as to each count of the indictment before you that you cannot find the defendant guilty unless he was a party to the scheme or artifice to defraud or to obtain money or property by false and fraudulent promises and representations at the time of the use of the mails referred to in that count. Thus, if a defendant had not yet become a party to such scheme or plan so that he was not a party on the date of the use of the mails, you must find him not guilty as to such count.

It is not necessary for the government to prove that the scheme to defraud was devised at any particular time prior to the use of the mails alleged in the indictment so long as such scheme to defraud is proved to have existed when the mails were used in the execution thereof. The gist of the offense is the use of the mails.

Each separate use of the mails for the purpose of executing a scheme to defraud and for the purpose of obtaining money by means of false pretenses, if charged and proved, is a separate and distinct offense. In this connection, you are instructed that each individual act of placing or causing to be placed of matter in any post office or taking or receiving matter from the post office in furtherance of

[fol. 949] such a scheme constitutes a separate and distinct offense.

I charge you that it is not enough for the prosecution to show the existence of a plan or scheme to defraud or to obtain money or property by false or fraudulent promises and representations, and the membership therein of any particular defendant. This alone would not prove that the defendant participated in the plan or scheme "knowingly and wilfully". With respect to said defendant, the prosecution has the further burden of proving beyond a reasonable doubt that the defendant participated in such agreement wilfully; that is, the prosecution must prove that such defendant entertained the specific intent to defraud or to obtain money and property by false and fraudulent promises and representations.

If you are not convinced beyond a reasonable doubt that the defendant acted "wilfully" your verdict must be not guilty.

It is not essential that the government prove each and every false pretense, representation or promise alleged to have been made or intended to be made, but it is essential that proof be made that the defendant did devise the scheme to defraud of substantially the kind and character alleged, and that he employed any one of his false and fraudulent promises, representations and pretenses alleged, and in furtherance of such scheme used the United States mails or [fol. 950] caused them to be used substantially in the manner alleged in the indictment.

You will note that the acts charged in the indictment are alleged to have been done with "intent to defraud".

To act with "intent to defraud" means to act knowingly and with the specific intent to deceive, for the purpose of either causing some financial loss to another, or bringing about some financial gain to oneself.

In every criminal offense there must be concurrence of with act and intent. This is especially true in an offense like the present one which requires that the act shall be done knowingly and wilfully.

This intent is a material element of the offense which, like all others, must be proved beyond a reasonable doubt.

In determining the question, you are to consider all the facts and circumstances in the case which touch the conduct of the defendant, as well as the declarations and admissions, if any.

Criminal intent may be implied from the acts, conduct, declarations or admissions of the defendant. Such acts, conduct, declarations and admissions, as shown by the evidence considered in relation to the charge made, may establish criminal intent beyond a reasonable doubt.

You will note the indictment charges that the offense was committed "on or about" a certain date. It is not [fol. 951] necessary that the proof establish with certainty the exact date of the alleged offense. It is sufficient that the evidence shows beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.

You will note that under the indictment the acts are alleged to have been done knowingly, wilfully and unlawfully. The word "knowingly" when applied to an act or thing done imports knowledge of the act or thing so done as well as an evil intent or bad purpose of doing such act or thing.

Differently put, an act is done knowingly if done voluntarily, and not because of mistake, inadvertence or other innocent reason.

An act is done "wilfully" if done voluntarily and purposely and with the specific intent to do that which the law forbids. That is to say, with evil motive or bad purpose either to disobey or to disregard the law.

The word "unlawfully" as used in the indictment means that the act which is so characterized proceeded from a criminal intent and evil purpose.

They import knowledge of the act or thing so done, as well as an evil intent or bad purpose in doing such act. They exclude all color of right and excuse for the act.

The law does not require any defendant to prove his innocence, which, in many cases, might be impossible, but on the contrary, the law requires the government to establish his guilt by legal evidence and beyond a reasonable doubt.

[fol. 952] The presumption of innocence with which the defendant is at all times clothed is not a mere form to be dis-

regarded by you at pleasure. It is an essential substantial part of the law and is binding on you in this case.

If you can reconcile the evidence before you upon any reasonable hypothesis consistent with the defendant's innocence, you should do so, and in that case find the defendant not guilty.

A reasonable doubt is a doubt based on reason, and which is reasonable in view of all the evidence. And if, after an impartial comparison and consideration of all the evidence, or from a want of sufficient evidence on behalf of the government to convince you of the truth of the charge, you can candidly say that you are not satisfied of the defendant's guilt, then you have a reasonable doubt. But if, after such impartial comparison and consideration of all the evidence, you can truly say that you have an abiding conviction of a defendant's guilt, such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, you have no reasonable doubt.

Reasonable doubt is not a mere possible doubt, because everything relating to human affairs and depending on moral evidence is open to some possible or imaginary doubt. It is that state of the case which, after the entire comparison and consideration of all the evidence, leaves the minds [fol. 953] of the jurors in that condition that they cannot say they feel an abiding conviction, to a moral certainty, of the truth of the charge.

A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt of every essential element of the crime charged, a defendant has the right to rely upon the failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out in cross examination of witnesses for the prosecution. The law does not impose upon a defendant the duty of producing any evidence.

You are instructed that the word "scheme" and "artifice" as used in the mail fraud statute include any plan or course of action intentionally devised for the purpose of deceiving and tricking others and thus fraudulently obtaining their money or their property. It is not essential to the making out of the charge that the scheme or artifice should have

been successfully carried out, or that the defendant made a profit on the venture.

You are instructed that it is conscious fraud which is punished. Therefore, although men may be visionary in their plans and believe that they will succeed, yet in spite of the ultimate failure of the concern, they may be wholly innocent of committing a conscious fraud. Therefore, if [fol. 954] you believe that the defendant actually entertained the belief of the ultimate success of the project, corresponding with the representation made, then the defendant did not commit the offense charged, and you should return a verdict of not guilty. The significant fact is the intent and purpose. The question presented to you in this case is not whether the business of Ralph Hastings was practical or not. If you believe from the evidence in this case that the defendant acted in good faith, then you must return a verdict of not guilty against the defendant, no matter how visionary might seem the plan or judgment of the defendant.

There is nothing fraudulent about agreeing or offering to deliver in the future that which the person so promising or agreeing does not presently possess. It is only when prior to the time of making of the agreement or offer he has no intention of fulfilling his commitment, that the offer or agreement is fraudulently made.

In this connection you may also consider other communications that have been introduced into evidence other than those set forth in the 30 counts of the indictment. But other matters admitted may be considered by you upon the question of showing the intent of the defendant at the particular time charged as to whether or not there was in fact in existence a scheme or conspiracy to defraud as charged.

Evidence that an act was done at one time or on one [fol. 955] occasion is not any proof whatever that a similar act was done at another time or on another occasion. That is to say, evidence that a defendant may have committed an earlier act of a like nature may not be considered in determining whether the accused committed any offense charged in the indictment.

Nor may evidence of alleged earlier acts of a like nature be considered except as bearing on intent.

If the jury should find beyond a reasonable doubt from other evidence in the case that the accused did the acts charged in the particular count under deliberation, then the jury may consider evidence as to an alleged earlier act of a like nature, in determining the state of mind or intent with which the accused did the acts charged in the particular count.

That the defendant, in a particular case involving issues such as are here involved, intended to defraud by the scheme claimed to have been devised by him, may be inferred from the circumstances in the case. The existence or lack of fraudulent intent necessary to constitute using the mails to defraud rarely appears except by inference from all the facts and circumstances in the case. It is not necessary that the prosecution prove such intent by the admissions or by the express assertions or statements of the defendant as to what his purpose was in devising the alleged artifice or scheme to defraud.

[fol. 956] Fraudulent intent may be proved by circumstantial evidence.

Any omission from a statement or representation of qualifying or supplementary facts and circumstances such as to render so one-sided a version of the facts, as to amount to a travesty and not a truthful summary thereof, is enough to establish a misrepresentation.

To state a thing which is only true with qualifications, or subject to conditions, known to the person making the statement, but as to which he is silent, is to make an untrue statement. It is familiar law that a fraudulent representation may be effected by half truths calculated to mislead. Sometimes a half truth is no better than an outright falsehood. Having chosen to speak, there is an obligation to tell the whole truth. And a statement, although literally true, is nevertheless false, if, when understood by the effect it would produce on an ordinary mind, it would create a false impression of the true state of affairs.

The law presumes that the defendant did not intend to defraud. This presumption of law is a matter of evidence and has of itself sufficient force and effect to require you

to find the defendant not guilty unless, after fully and fairly considering all of the evidence in the case, you are convinced beyond all reasonable doubt and to a moral certainty that the defendant is guilty in the manner and form as charged [fol. 957] in the indictment.

The effect of the representations that were made is to be determined by the impression they would likely produce upon a mind of ordinary prudence and comprehension.

If the representations are designed to mislead they are proscribed by the statute.

The guilt of a defendant may be established without proof that the accused personally did every act constituting the offense charged.

The law provides:

"Whoever commits an offense against the United States, or wilfully aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal."

and

"Whoever wilfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

Every person who thus wilfully participates in the commission of a crime may be found to be guilty of that offense. Participation is wilful if done voluntarily and purposely and with specific intent to do what the law forbids, or with specific intent to fail to do what the law requires. That is to say, with evil motive or bad purpose either to disobey or to disregard the law.

[fol. 958] You are instructed that matters of fact, if any, which are left uncertain by the evidence cannot be made certain to the prejudice of the defendant by inference. In the absence of evidence, no inference can be drawn by the jury against the defendant but, on the contrary, all inferences and presumptions consistent with the facts proved are to be drawn and indulged in favor of the innocence of the defendant.

While a defendant in a criminal action is not required to take the stand and testify, yet if he does so, his credibility and the value and effect of his evidence are to be weighed and determined by the same rules as the credi-

bility and effect and value of the evidence of any other witness is determined. And the tests I have given you for determining the credibility of witnesses must be applied to his testimony also.

A defendant is not required to prove a fact beyond a reasonable doubt nor by a preponderance of the evidence. It is enough if the evidence he produces is sufficient to create in the minds of the jurors a reasonable doubt with respect to any of the facts essential to constitute the offense.

Both the Government and the defendant are entitled to the individual opinion of each juror. It is the duty of each of you to consider and weigh all the evidence in the case, and from such evidence to determine, if you can, the [fol. 959] question of guilt or innocence of the defendant. When you have so determined that question, you should not be influenced in giving your verdict by the mere fact that any number or all of your fellow jurors may have reached a different conclusion. If after careful consideration of all the evidence your mind is fairly made up and you are convinced that you are right, it will be your duty to stand by your verdict. But each juror should freely and fairly discuss with his fellow jurors the evidence and the deductions to be justly drawn therefrom. This it is his duty to do. This after such a full and fair discussion any juror is satisfied that his original decision was wrong, then he should unhesitatingly abandon such decision and render his verdict according to such final decision.

The first duty upon retiring to the jury room to begin your deliberations will be to select one of you as foreman.

As you have already been informed the jury in criminal cases in Federal Court is what is known as a common-law jury. That is, all of you must agree before a verdict can be returned upon any count of the indictment. This would also be the rule in state cases except that we are governed by that rule even in civil cases. Unanimity of verdict is required.

For your assistance the clerk has prepared a form of verdict which reads as follows:

"We the jury in the above-entitled cause find the defendant Mortimer Singer blank as charged in Count 1 and blank as charged in Count 2 and down to Count 30."

If you reach a verdict as to any of the counts, a unanimous verdict, you will insert the proper word. If you find the defendant guilty as charged in Count 1 of the indictment you will put in that word. If you find him not guilty you will put in those words. And the same way as to each count of the indictment.

While the same scheme to defraud is alleged as to all, and there being only different mailings, a scheme to defraud is alleged in Count 1, you are not required by any law of consistency to find a verdict, the same verdict as to all the counts. If you are satisfied that one verdict should be returned as to one count and another as to another, you are free to say so by your verdict. In other words, whether you find the defendant guilty or not guilty of a particular count in the 30-count indictment it is up to you to determine in accordance with the rules I have just given to you.

When you have reached a verdict it should be signed by the foreman at the place indicated and dated at the place indicated at the bottom and returned to the Court.

Are there any objections to the instructions given or those refused? If so opportunity will be given to counsel to both sides to present them outside the hearing of the jury. [fol. 961] Mr. Campbell: I would like to call your attention to one word, your Honor, which if I may I would like to do at the side bar.

(The following proceedings were had at the bench out of the hearing of the jury.)

Mr. Campbell: Your Honor inadvertently said "scheme or conspiracy to defraud as charged in this indictment."

The Court: No, I never used the word "conspiracy".

Mr. Campbell: Yes, it was used shortly after—there was a pause. You paused in your instructions while you were making some corrections.

(Record read.)

(The following proceedings were had in open court within the presence and hearing of the jury:)

The Court: Ladies and gentlemen, I made a mistake in using a word that I did not intend to use at all, and coun-

sel have called my attention to that fact. In fact, that is what the law provides, that we are to give them an opportunity to call attention to an error that may have been committed so we may correct it.

So I will reread the instruction in which the error occurred and leave it as it should be. I think I will read the instruction which precedes it because it will show better in context.

There is nothing fraudulent about agreeing or offering [fol. 962] to deliver in the future that which the person so promising or agreeing does not presently possess nor has the means to acquire, so long as he in good faith intends to deliver under the terms of his promise or offer. It is only when, prior to the time of the making of the agreement or offer he has no intention of fulfilling his commitment, that the offer or agreement is fraudulently made.

In this connection you may also consider other communications that have been introduced into evidence other than those set forth in the 30 counts of the indictment. But other matter admitted may be considered by you upon the question of showing the intent of the defendant at the particular time charged, and as to whether or not there was in fact in existence a scheme to defraud as charged.

Any other?

Mr. Thornton: I have nothing, your Honor.

Mr. Campbell: Nothing further, your Honor.

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TRANSCRIPT OF RECORD

IN THE SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1963

IN ELEVEN VOLUMES

No. .....

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MORTIMER SINGER, Petitioner,

vs.

UNITED STATES OF AMERICA, Respondent.

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VOLUME ELEVEN

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE NINTH CIRCUIT

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[fol. 1000]

VOLUME B

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

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TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

Tuesday, May 1, 1962

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OPENING ARGUMENT ON BEHALF OF THE GOVERNMENT  
[fol. 1001]

Mr. Thornton: If it please the Court, Mr. Campbell, Mr. Johnson, ladies and gentlemen: I will address you for approximately an hour. The time will be divided between opening argument and closing argument. After the government, as you probably know, finishes the opening argument, defense counsel has his opportunity to present his argument, and the government has a chance for rebuttal. I expect the total time I will take will be approximately one hour.

The indictment as you are well aware was in 30 counts.  
[fol. 1002] It referred to 29 different people.

Leola Thompson was in Counts 26 and 27, the person named in both of those counts.

The Court: I do not think the jury can hear you, I can't hear you.

Mr. Thornton: Counts 1 through 17 inclusive refer to mail matter that was going from Los Angeles from the Ralph E. Hastings Company to the amateur songwriter. Counts 18 through 30 refer to the receipt of money, money that was being transmitted by the amateur songwriter to the Ralph E. Hastings Company.

If there is a fraudulent scheme it is a violation of law even though the money is coming this way into the operation; for you are causing that as part of the scheme.

We have entered into a stipulation that you will be able to examine. In Counts 18 through 30 we set forth the exact date on which the money was received by the Ralph Hastings Company. That will be somewhat different than the date in the indictment. However, the government is not bound to establish with pinpoint accuracy the date on which mail matter is received. In this case it is not a point of argument. We have stipulated to the date on which it was received.

Ladies and gentlemen, I would like to go through what we consider the basic scheme in this case. We submit to you here that there were three separate deals, at least in my [fol. 1003] logic of developing the argument it seems to be divided that way. First, there was the Madhatters.

Demonstration record, 78 rpm for \$87.50. If you did not accept that that you are propositioned with the Ken Starr 78 rpm recording for \$44. And then lastly it would flow from either of these two, you were offered to have 45 rpm records, 100 records, pressed for \$94.

In one case only, Mrs. Margaret Hardcastle, who appeared as a witness, she had a reduced rate of 50 records for \$47. Oh, in two cases, also Hollis Taylor, and in another case which was a 1957 contract where they obtained a Madhatters recording for \$77.50. But basically the deal was for \$87.50. So we have three things, the Madhatters, Ken Starr, and then the production of 45 rpm, 100 records for \$94.

The basic letters: The first one starts out:

"The Madhatters have informed me"—with that letter was the royalty agreement, and also enclosed with that initial letter was the Madhatter circular.

There was miscellaneous correspondence, and where we have it it has been admitted into evidence.

The next letter "Your communication advises us you do not have an orchestration or vocal arrangement."

Next the main point of contract:

"As we both understand you are not required" and so forth, to have any further development.

[fol. 1004] Fourth "It is my desire to handle hits."

And the next thing was the telegram. We will go through that.

And then following that, although the contract was for six months, we will show that generally February of 1959 the closing letter:

"Our contract is all over, it was only for six months."

Those are the letters that I would like to go through with you.

I ask you to put yourselves in the frame of mind of an amateur songwriter who submitted a letter to a Hollywood firm and had received either a lead sheet in which the company had placed music to your lyrics, or even if it went further, and you had received your records, a piano-vocalist together, you are sitting at home, and you are receiving this first contact. What would be your reaction?

"The Madhatters have informed me that they are willing to record your song with orchestra at a session now being scheduled, and have requested that I contact you for the necessary permission.

"I am the Madhatters' person manager. As I understand the song which the Madhatters refer to is one of your compositions they learned of from a publisher's agent who is either handling your song or has handled it in the past. [fol. 1005] The title of the composition is 'Freckle-faced Lover.'"

With that you received this Madhatters' circular.

"The new Madhatters Trio."

Three people pictured yours. Motion picture credits, statements by well-known Hollywood personalities; Gene Russell, Marilyn Monroe, Charles Coburn.

"Recently Desert Inn, Las Vegas, Flamingo. Recently Colgate Comedy Hour, Jimmy Durante, Ford Theatre. Personal manager Ralph E. Hastings."

What would be your reaction? What have these people testified to? What is the reaction of an ordinary person of ordinary prudence and comprehension? What have they told you? This is the whole point of the government's case, the main thrust of the case. It is not a question of whether or not they lived up to their royalty agreement, which we will submit they made a sham attempt to, an effort to deceive people, give the appearance of complying. That is not the question of whether they lived up to their contract. They deceived you at the outset into entering into the contract. They induced you by false representation.

If you took this at face value, they appear to be red hot. They are appearing on television, in top night clubs in the city, Las Vegas, Colgate Comedy Hour, which is a top television program. They appeared in motion pictures. They tell you this group is interested in your song. They [fol. 1006] are not interested in a thousand songs, they are interested in your song.

"I am the Madhatters' personal manager."

What does "personal" mean to you? Never met Ralph Hastings, not even at his son's wedding where he introduced Mr. Singer as Ralph Hastings. Some time after that they found out who he was.

You were told that the Madhatters had requested Ralph Hastings to get the necessary permission because they are interested in recording your song.

As I understand it the song which the Madhatters refer to is one of your compositions they learned of from a publisher's agent who is either handling your song or has handled it in the past. The song went from you to Music-makers for a dollar a name on a customer's list, I think that is what Mr. Freed testified to, it went Sanford Dickinsen, to Ralph Hastings.

The Madhatters never learned of your song until you paid \$87, and they were ready to record it. It was played on a tape. They received the tape to listen to. Then they came down and sang 15 or 20 songs in a two or three-hour session, \$2.00 apiece, a total of \$6.00 for the trio.

He puts in a letter that he wants your permission for a song they have learned of from a publisher's agent. They didn't even learn of it until this offer was accepted. They [fol. 1007] didn't learn of the publisher's agent. You are the publisher's agent. Then we get to the sixth paragraph:

"If you do not have an orchestration and vocal arrangement for the song, if you have difficulty in obtaining this let us know."

It is going to be a free deal, of course.

In all their thousand songs how many free deals were there? We didn't have their books and records. Mr. Singer testified there were ten or eleven and they accepted eight or nine. I do not imagine they were in business three months before they realized that these people didn't have vocal arrangements and orchestrations.

There is considerable question whether you even need it for a Ken Starr recording.

So the free offer wasn't all that it appeared to be.

The royalty agreement tells you you are going to get 90 percent of all royalties. 90 percent of nothing is nothing,

and 90 percent of 48 cents isn't outstanding or much of a return on your investment.

In that second paragraph there is one phrase: "The author hereby"—I'm referring to the royalty agreement that went out with the first correspondence—"the author hereby grants to the agent the right to record said composition with vocal group known as the Madhatters and orchestra and to retain a master copy of said recording at Studio 3."

[fol. 1008] Remember Studio 3? Really Room 3, 12 by 19. "At Studio 3, Producers Motion Picture Studios, for the purpose of creating an audition recording to be made available for motion picture musicals."

What does "made available" mean? At the first location, Producers' Studio. Then when they moved the first of the year it was their office at 7901 Crenshaw.

Does that mean if a producer happened to stumble into Room 3 and request this, then it would be available, or if he happened to find that other location on Crenshaw, if he found that alleyway and walked down to an office that didn't have any sign on it and happened to find Rose Zucker, and he asked the right question, would it be made available, or did it mean that some positive efforts were going to be made?

That's the first contact you have had.

Is the government presenting a fair inference when they basically told these people that a professional group that was appearing in Las Vegas and on television thought this thing had merit, and they were contacting you before this work was done on it to get your permission. You induced the contract regardless of whether you lived up to a meaningless royalty agreement. Before those people signed you made false representations on this phase of the program, the \$87 deal.

Let me go into this circular for a minute. As you know [fol. 1009] the Madhatters Quartet is a male quartet. I think Mr. Moody and Mr. Tippie testified. One said in 1954 and '55 was the last time that quartet appeared in Las Vegas. This literature goes out. The one I was reading was July 18th, 1957. That is some of the earlier literature.

It went out through 1958. What does "recently" mean to you in the entertainment field? You are not an entertainer, you are a normal citizen in any state in the union. Does it mean the last couple of weeks, last month, last six months, the last entertainment season, the last year? By any stretch of the imagination does it mean four years?

This is all based on Warren Tippie's approval. I want to talk about Warren Tippie's approval on the Madhatters' circular Exhibit H and the letter prepared by Mr. Dickinsen which he signed, Exhibit G, which Mr. Tippie signed.

First of all Mr. Tippie doesn't have any authority to give anyone any rights to misrepresent. They argue, well, the personnel is always changing. The managers are always changing. Aren't you indicating that that group appeared there recently? Aren't you indicating that Ralph E. Hastings is putting these people in motion pictures, or at least attempting to do so, he is attempting to put them in television, is attempting to put them in Las Vegas, in night clubs. Let's read their own agreement which they brought in dated January 22nd, 1958 addressed to Mr. Dickinsen.

[fol. 1010] "Dear Mr. Dickinsen:

"This letter is to confirm our original oral agreement and understanding entered into prior to the first Madhatters session on the Hastings' songs. This refers to a series of recording sessions by the Madhatter Trio and orchestra. It is our understanding that a party agreeable to you and doing business as Ralph E. Hastings will supply new songs for our recording approval."

That is interesting, isn't it?

The last paragraph:

"It is further understood that said party is the Madhatters' personal manager."

Now reconcile these two, where he puts "personal manager" for television, Las Vegas, night club appearances.

"It is limited, however, to the recording session and the records. The songs for same to be supplied by said party. It is understood and agreed that all publicity relating to the Madhatters created by said party doing business as Ralph

E. Hastings is to be first submitted for our approval as was the circular entitled 'Successful on tour, now sensational in Hollywood, the New Madhatters Trio.'"

The only approval they were given, if they couldn't sing it then it was rearranged. Mr. Tippie was asked how many [fol. 1011] songs did he reject in all. He said about two or three out of 900.

"It is further understood that we are willing to record said songs if found satisfactory to us if permission is sought from and granted by the author of the composition."

He is limited to this record as to this particular song. Any limitations on that representation, that circular?

Let us assume that you wrote back and said, "Well, we are interested in something but we do not have the vocal arrangement and orchestration."

Then the next letter. This is the second main point of contact. Your communication advises that you do not have an orchestration or vocal arrangement. Of course it will be necessary to have both a vocal score for the Madhatters and the instrumental arrangement for the orchestra behind the Madhatters.

The director of recording, who is he? Is that the owner of the record studio?

"The director of recording has been informed of your advice that no orchestration or vocal arrangement is available. He advises that he can have the necessary arrangements prepared for both the studio orchestra and the Madhatters. The Studio 3 scale rate for both the orchestra and [fol. 1012] vocal arrangement will be in this case \$77.50."

This is a letter which says at the top "Ralph E. Hastings Producers Motion Picture Studios."

We found out that was the name of a building, Studio 3, 5634 Santa Monica Boulevard, Hollywood. Well, it is Room 3. The studio as such doesn't have a scale rate. What does he call it? "Studio 3 scale rate."

The owner of the building who did production work at this time said that it is handled by the union, there is no studio scale rate. Actually Mr. Singer told us what it was, what Mr. Dickinsen's role in this whole affair was. Was he

a partner? No. He was receiving \$30.50 on a 78 rpm, and he was receiving \$80 for each record where they ordered 100 records.

Incidentally, when I recall the testimony, if it differs from your recollection, of course rely on your own recollection and not mine. But at any rate, it is my recollection that Mr. Singer testified they didn't think that covered the orchestration and vocal arrangements which were \$12. They were making a profit on \$87.50. That was the whole purpose of the operation, to give the impression that this \$87 was just going to be handed out to Studio 3, \$77.50.

If you desired it you would write in. Then you sent in your \$87.50. That more or less completed the Madhatters' [fol. 1013] operation.

Let us just talk about Ken Starr. The letter I have is from the Beebe folder we made up.

"If you recall we advised you that Ken Starr and the Vincent Poli orchestra are willing to record your song. We have secured publication under standard royalty terms for quite a few of Ken Starr and Vincent Poli orchestra recorded songs. We have taken the liberty of discussing your song with the publisher. You will be glad to know that the publisher is willing to issue standard royalty contracts for the immediate publication of the song. The publisher makes no charge to you for the right of publication. Under the terms of their standard royalty contract you will be entitled to royalties on song folios sold and paid for containing your song."

And as we know that publisher is never identified in any Ralph Hastings' literature. Never. We also know who it is, Dallas Turner, Eagle Pass Music Publications.

"This publisher has placed under contract successful radio, TV recording and stage personalities and is issuing a series of song folios featuring these artists. The publisher has agreed to issue standard royalty contracts for the pub- [fol. 1014] lication of your song featured in folio providing we supply him with a demonstration recording of the song by Ken Starr and the Vincent Poli orchestra. The publisher has insisted on this recording for possible exploitation purposes."

I want you to bear this in mind when we go on to what happens to the Madhatters. Here we are telling him to get the \$44 Ken Starr recording. To satisfy Dallas Turner we have to have a demonstration record. But on the Madhatters it is not until you get the \$94 over that they then tell you it is not a demonstration record that Dallas Turner has to have, he has to have 100 records to meet his disc jockey contact. Why would the difference between Ken Starr, where they want a demonstration record and the Madhatters which has got to be 100 records? It's just the difference in the sales pitch.

Incidentally, the people who received Ken Starr records of course had no leaflet on Ken Starr but they still had received previously this literature which indicated the personal manager Ralph Hastings for this other group, and they put their name right on the heading there, the Madhatters, that he was personal manager of the group that appeared in motion pictures, television, and night spots. So you have the impression that this Ralph Hastings is the man in the know, man on the move, a man that can do something for you.

[fol. 1015] So this fraudulent representation still carries over. You carry Ralph Hastings on the top of your literature.

But that basic point I want to get to, when they made the approach to Ken Starr it was because they had to satisfy Dallas Turner who wanted a demonstration record. When they made the approach for the \$94 for 100 records of the Madhatters it was because he needed it, because you already had your demonstration record, they couldn't use that same idea again, so now he said he needed 100 records for his disc jockey contact.

I do not want to jump ahead of the story, but this letter is dated September 22nd, 1958. You remember the whole big argument about Bakos. "We never used any contracts after that." I think it was September 9th, 1958. It doesn't have the year but he said by checking these invoices it would show that it was 1958. So they are still talking about Eagle Pass contracts September of '58. You will remember in September of 1958 that "The publisher has agreed to issue standard royalty contract for the publication of your song

and feature it in folio providing we supply him with a demonstration recording of the song by Ken Starr." Did he put it out on folio? This is September 22nd, 1958. Do you recall the stipulation that we agreed to? I want to read that to you. When was the last folio they published we know of?

Page 847 of the transcript, it's Volume 7.

[fol. 1016] Mr. Campbell: It will be stipulated that if called to testify the Artisan Press at 1455 Gordon Street, I believe that is, Hollywood, would testify that on five occasions in 1958, to wit, March 20, May 15, May 21st, June 24th, and July 20th, song folios, song books were published or printed by them for the Eagle Pass Music Publications in quantities of a thousand each."

It could be printed by another company, that's a possibility. We have no evidence of it.

That's the Ken Starr approach now. \$44 because Dallas Turner needs a demonstration record.

Now we finished two sections. We finished the Madhatters for \$87.50, and we finished Ken Starr for \$44. Now let's go on to the 100 records for \$94. The next main point of contact as I say is this following letter. And this was Mr. Beebe.

"As we both understand you are not required or obligated to expend any further moneys for the development specified in the agreement which covers the recording by the Madhatters and the availability of that recording for motion pictures, television and radio."

That's an interesting word "availability."

"The song has been recorded by the Madhatters and is in our opinion a very fine recording."

[fol. 1017] This letter is for the purpose of advising you of that if you desire to have the recordings pressed on commercial records and distributed to certain key disc jockeys.

What is a key disc jockey? Is that a disc jockey where they take his name out of a book here and you give it to Rose Zuckor and you say "You type up a list of disc jockeys"? Is that what you call a key disc jockey?

At the same time advertise to record stores. What are you going to advertise to record stores? The Madhatters'

recording? The song by Leo Thompson? She comes from Colorado. No attempt made to send the literature to Colorado, it was just sent, broadcast throughout the United States. I'm not a salesman, but if I had a Madhatters recording and the Madhatters were anything like was represented here wouldn't you at least tell the people it was a Madhatters' record? No indication on this literature that it is a Madhatters' recording. When those records went out no indication on here that it is a Madhatters' recording. Were they really interested in selling the record or was it just a sham? These documents prepared by Warren Tippie were prepared in 1957 because of that fateful eventuality that maybe the Postal Inspector might be breathing down their throats or they might get to court. Is that why we did this sham mailing service? No record on here of Madhatters. There is an M. H. in the circles. M. H. stands for [fol. 1018] Madhatters. Remember Mr. Washburn, the man that made these records mentioned "Madhatters? I have forgotten. That's what M. H. stands for."

What about the disc jockey, what is M. H. going to mean to him? Is he going to be interested in playing a record if he doesn't know who recorded it? Or the record dealer, if you pick his name out of the book, you don't tell him prices, no prices indicated. We don't tell the full name of the author. "BE MINE by Thompson." Supposing it was by Foster? Does it mean anything? Stephen Foster might mean something. If it was in Rifle, Colorado, maybe Leo Thompson's name might mean something. Thompson doesn't mean much.

You saw Mr. Singer on the stand. You have observed him during this trial. Mr. Singer is an intelligent man. Mr. Singer couldn't sell a product if he wanted to, if the product was salable. He could certainly do much better than that. Look at that record. You pay \$100. That's what the witness said. What's my name on here for? Where is the Madhatters' name? I am looking for Ken Starr because I think Ken Starr's name did go on it. The only thing is nobody knew who he was, not even the people around him. They knew him as Ken Kenniston.

Listen to this: This is a Ralph Hastings Company writing.

"After the original 100 records are pressed we plan to [fol. 1019] contact disc jockeys and record stores."

"We plan." Ralph Hastings. Right.

"We will then send the selected disc jockeys a recording and the music stores a notice that commercial records of the song are ready and ready to put on sale."

They say "After the original 100 records are pressed we plan to contact the disc jockeys and record stores."

You want to make a contact. What are you going to do then?

"We will then send the selected disc jockeys a recording and the music stores a notice that commercial recordings of the song are ready and available to be put on sale."

Is that a two stage project or not, or is it fair that Mr. Beebe might infer that. You are going to write to disc jockeys, you are going to contact them, then selected disc jockeys are going to get the record. That wasn't the procedure followed in this case.

Of course maybe Mr. Beebe misinterpreted that. Maybe no one should follow that. You should just assume they are going to pull names out of the book, give them to Rose Zukor and away it goes, the whole list of them. Why do you say "key disc jockeys"? Why do you throw out these big words "selected disc jockeys" after you have had an initial [fol. 1020] contact? You know why and I know why, because that induces somebody to send in \$94.

Once again you are entitled to 90 percent of all royalties. That is the conclusion of the letter. The folder also contains the folder about the Christmas records or rather lead sheets, 250 for \$32. We did not allege that in the indictment. I will not cover that in the argument.

In the event you didn't go for that letter you got another letter. Let us see the sequence here. You got the letter offering 100 records on October 23, 1957. Then you got a letter on February 7th, 1958 as follows:

It is my desire to handle it. My opinion is that songs recorded by as fine a group as are the Madhatters deserve public attention. Many producers of motion picture, musical and leading record companies prefer to consider published music.

Does that mean song folios or does that mean records? In spite of the fact that my contract with you is specific representation of the record I believe that an attempt should be made to try to obtain—"

He is going to make an attempt to obtain a publishing contract. This goes out in May '58, July '58, August '58, and so on. His agreement with Dallas Turner was entered into on February 5th, 1958.

[fol. 1021] "With this in mind and with your permission I plan to enter into conversations with publishers."

There is no future plan to enter into. He has his agreement. He knew what he was getting from Dallas Turner.

"Many top recording artists and recording companies prefer a song be published before they negotiate a royalty contract. In the event any discussions I have with publishers develop an interest on their part I will advise you", et cetera, et cetera.

Here is a paragraph:

"I plan to negotiate."

This is what he says in February, May, August.

"I plan to negotiate with active, responsible publishing companies on a basis where the publishers pay all costs of publishing under standard royalty contracts."

Why are you leading these people to believe you are going out on the street with their record to negotiate? You had a deal with Dallas Turner. We will talk about his activities and responsibilities later.

"I will make no commitment until I advise you of any offers that might develop and secure your approval."

That was followed by the telegram. This one is Lucille Chance. **ROCK AND ROLL YOUR BLUES AWAY.** Accepted by publishing firm on standard royalty contract.

[fol. 1022] "We must manufacture commercial type records to cover publishers and disc jockeys."

Is that so? On Ken Starr he is happy with the demonstration record, but on Madhatters he must have commercial type records. What's the difference between the artists?

"Publisher will issue royalty publication contracts directly to you and I guarantee to him records are being manufactured. Record manufacturers assure me fast service. Publisher ready to go to press when records shipped to disc jockeys."

Go to press! Press what? More records or more folios? The Madhatters never made any references to who the publisher was or whether he was going to publish a pressed record or folios. But you were trying to sell a record.

"I checked publisher's royalty contract. Can carry standard terms."

"As previously advised the cost to you for the record will run \$94. If necessary can start preliminary manufacturing steps at \$50."

"We must manufacture commercial type records to cover publishers, disc jockey contact."

Now it's a switch. Why did he send the telegram. When you had an agreement with a man in February to put this stuff out why do you send the telegram in August or May? To create a sense of urgency. Get with it. Hurry, hurry, [fol. 1023] hurry.

"To cover publisher's disc jockey contacts."

What disc jockey contacts did Dallas Turner have? Is there any evidence that Dallas Turner ever mailed out any of these? What happened to the original agreement? They accepted \$94.

How many did he need? It doesn't say how many he needs.

On the Ken Starr records 28 people were named in the indictment. Only nine people accepted the Ken Starr only. Two took the Ken Starr record for 94.

Virtually everyone that took a Madhatter record sent the \$94 in.

Now I have gone through everything except that last closing letter. There are two forms. One is a signed contract with Eagle Pass and one that wasn't. Let me go to the one in the Beebe file. Many of them didn't go out dated. This one is dated December '58. Most of the ones in February did not go out dated.

"Inasmuch as your song recorded by the Hastings Company has been placed under publication contract in which you have transferred certain rights to the publisher, a six-months percentage recording contract executed by you and R. E. Hastings is automatically terminated. With our understanding and agreement you are allowed to enter into [fol. 1024] a publishing contract with the publisher. In spite of our 10 percent recording right we no longer are entitled to this 10 percent and hereby relinquish the same. In view of the fact that the song is now under publication contract all further negotiations or correspondence should be handled directly between you and the publisher."

That brings us once again to the point: Who is the publisher. That is more or less the end of the Ralph Hastings correspondence. Who is the publisher? The publisher was Dallas Turner, Eagle Pass Music Publications. Dallas Turner in 1958 at the time of the operation got a \$1,000 loan from Mr. Hastings. He did use it to promote these songs. He also used it for personal expenses.

What sort of a business did Mr. Turner have? Had he recorded any songs previously and published any recorded songs? No. What sort of office space did he have? He had an arrangement with Mr. Hufstedler. He didn't pay rent. He answered the phone once in awhile and he had one desk. What was the relationship between Mr. Hastings and Mr. Turner? Well, in December 1958 he introduced Mr. Hastings to Mr. Henke in Texas as his agent.

Wasn't it an interesting conversation when they were coming down on the elevator and Henke said something like "I have been getting letters from my customers about Ralph Hastings. Who is Ralph Hastings?"

[fol. 1025] This is their biggest account. This is Ralph Hastings. Henke introduces Mr. Singer.

This is an active and responsible company.

Then we come to the printing records of Mr. Bakos and we have the unpaid files which he keeps on his desk. Located in there is one September 19th, as stated before, 1958. Contract for Eagle Pass 500. Dallas Turner's name right on there. "Bill to Singer." Bill went out. It came in from a telephone exchange, AX 2-8161, motel in Los Angeles where Mr. Singer stayed. Mr. Singer states it was "While I was

in the Hominy Motel in Oklahoma", I would like to have seen the hotel record on that.

Furthermore, this says "Mr. Singer", it doesn't say whether it's Stephen or Mortimer. It could be either one of them.

Mr. Singer vehemently denies any business transaction where printing was ordered for Eagle Pass. He said they didn't keep good records. I think they are pretty good. The man has the invoice, his order sheet and the material he printed all stapled together.

Then in the paid bills we have that paid billed on one order for Eagle Pass and Ralph Hastings, one bill. Incidentally, if you check the letter of Eagle Pass it says "This letter is very important."

If you check Exhibits 1 to 30 you will find that this letter [fol. 1026] went out in September of 1958 also, or one similar to it.

He waves a 1957 invoice. He said, "Let's have it marked for identification so we can examine it." It is a coincidence that that bill was paid and wasn't for that material. On here you will find the written computations of Mr. Bakos. On here how he arrived at the computation, and you will find that the background and the basis of that computation is not the same. Also these were the unpaid bills and I think they include 1958 bills. This is dated December '57.

Did Mr. Singer try to confuse you at that point?

Ladies and gentlemen, I have used 50 minutes approximately, and I will reserve ten for closing. I would like to give you a quick synopsis. I want to refer to the indictment.

In the indictment the Grand Jury charges six specific misrepresentations and thirteen of what we refer to as implied misrepresentations. In other words, they didn't give all the facts, and they had a duty to give them all. It is not necessary that the government list each and every misrepresentation, but it must be to your satisfaction that they have proved one or more so that there is a fraudulent scheme. The Court will instruct you on the law, not counsel, so I will not go into that any further.

[fol. 1027] It is not necessary to prove them all, but you must be satisfied beyond a reasonable doubt that there were misrepresentations.

Just let me go into the sixth and I will not cover the other thirteen.

"That the Madhatters had learned of the compositions of said persons not from an independent publisher's agent."

"That the Madhatters as a vocal group had informed Ralph Hastings that they would be willing to record the songs of said persons now being scheduled, and that they, the Madhatters, contact the said persons."

The second, that a Madhatters' recording of itself would develop interest by publishers.

Third, that the agent would notify record distributors as soon as the 45 rpm records of each side were pressed, which pressing would be done upon the receipt by the defendants of \$94. That the defendants would negotiate for publication of music for said persons with active, responsible publishing companies.

Five, that the defendants were negotiating with a publisher that had placed under contract successful radio and TV recording and stage personalities, and that the defendants were issuing a series of song folios featuring these artists.

[fol. 1028] Six, that the defendants had made available the Madhatters recording to motion picture, radio and TV studios.

Just a couple of facts and figures on what happened here. Of the 29 people, 13 indicated from the evidence in the exhibits, purchased the Madhatters program plus the 100 records at \$94. There are four others where the evidence isn't complete but indicates they got both the Madhatters and the 100 records. You will have to draw inferences. I am saying 13 are clear cut.

There is evidence from which you could draw that inference.

One, as I explained before, and it is Mrs. Hardeastle. She got 50 records for \$47. That is the only one of that nature. There were two people who invested no money, Patricia Dick, who has appeared as a witness here. And

the other one did not appear. Young is the name. Count X. There was another one, Count XXIV, where they sent in \$50, but then in May of 1959 business was closing up so they returned the money.

Now if it is a fraudulent scheme even though these people either had their money returned or didn't invest it, then it is a violation because the literature that was sent out initially was sent out for the purpose of defrauding. So it is not a necessary part of the scheme that they actually were defrauding.

[fol. 1029] Nine people purchased Ken Starr records. Of the nine only two went on to get the 100 records for \$94. That accounts for the 29.

Thank you. Nothing further, your Honor.

\* \* \* \* \*

[fol. 1030] REBUTTAL ARGUMENT ON BEHALF OF THE GOVERNMENT

Mr. Thornton: If it please the Court, Mr. Campbell, Mr. Johnson, ladies and gentlemen: I would like to move rapidly and cover points which I believe need covering that counsel has brought up.

First counsel has referred to Item 3 of what we have alleged as misrepresentation in the indictment. I want to refer to that one specifically "That the defendants would distribute records of said persons to selected disc jockeys and would notify record distributors as soon as the 45 rpm of each of said person is pressed, et cetera."

In my opening statement before the trial I said that we didn't know whether they had been sent to the disc jockeys. It goes back to that literature in the first part where they say "key disc jockeys" and then they say "We will contact disc jockeys" and then the next sentence, and then "to selected". The testimony here does not indicate any type of selection. The only selection was the original one, one stage, when he gave Rose Zukor the book and said "Type up the list."

Counsel mentioned the analogy of the power of attorney and the limited type of agency. Let's see. That's quite a common thing in law, any type of law. The question is not [fol. 1031] that Mr. Hastings could not enter into a limited

power of agency, but why didn't he tell people about that, that his personal management was limited just to that record, that he didn't have anything to do with night clubs. Nothing wrong about that agreement. Why didn't he tell the people about it?

Oh, and he said "We never asked the Madhatters whether they selected the song." I think he was relying on his recollection, but as I said you are wrong on occasion and I am sure I am too. But on page 211 of the transcript, the testimony of Mr. Moody, and a question by me:

"Q. I want to show you a letter from Exhibit 1. I would like to read to you the first two paragraphs.

"The Madhatters."

Then at the end of the two paragraphs I said:

"Did you make a specific request by song title to have an opportunity to record it in this group?"

"A. No, I didn't."

Then we asked Mr. Moody a question on page 662, line 8:

"Q. Would you tell us, did you select the songs?

"A. No, sir.

"Q. Would you tell us how this was arranged?

[fol. 1032] "A. Well, Mr. Dickenson brought the songs to us already arranged, that is, the chords written out, and the orchestra track, and then we put the orchestra track on our tape machine and we went over the manuscript, the music, while listening to the orchestra track. And if there was some parts that we thought my wife should sing solos in, or Mr. Moody or myself, we arranged it, we did our own arranging from that standpoint, in order to give a little more to the completed arrangement.

"Q. Was the same arrangement followed when Mr. Stephen Singer took over, that is, that they brought the songs to you?

"A. Yes, sir."

Now the production of Dallas E. Turner as a witness, in saying that we knew what he was going to testify to, we made the statement in open court that he refused to be interviewed the day before trial. Mr. Turner told you that he had appeared before the Grand Jury around Thanks-

giving time 1960. Then you recall on redirect examination I asked "Did you answer all the questions that were given by the Grand Jury?" And he couldn't recall. That's a pretty important thing to remember when you refuse to answer a question, but he couldn't recall that.

[fol. 1033] Then the other point, I said, for example:

Were the checks covered and he said, no, he didn't cover any. The checks weren't presented to him before the Grand Jury. So therefore we didn't know all the answers.

We knew what the rest of the evidence was going to be. We asked Mr. Turner to take a close look at this contract. Did he see Mr. Hufstedler present when he signed that? Oh, yes, I know that. He was going on a trip to Oregon. He signed that. That isn't so, that is a forgery.

Mr. Campbell: I'll object to the statement that that was a forgery.

Mr. Thornton: I will read that from the transcript.

The Court: The jury are instructed to disregard that. The witness said it looked like his signature. No one contended it was his signature.

Mr. Thornton: May I read it?

The Court: He didn't remember signing it. It looked like his signature though. Go ahead and read it.

Mr. Thornton: This is direct examination, page 681:

"Q. Mr. Hufstedler, did you ever hear of the Eagle Pass Music Publications Company?

"A. Yes, sir, I have.

"Q. Who was the operator of that company?

[fol. 1034]. "A. Dallas Turner.

"Q. Were you ever a partner of Dallas Turner in the operation of that company?

"A. Absolutely not.

"Q. I want to show you Exhibit 39 marked for identification. Is that your signature at the bottom of that sheet?

"A. I didn't sign this document. This could be my signature or a copy of my signature.

"Q. But you didn't sign it?

"A. No, sir.

Misrepresentation No. 5: "The defendants were negotiating with a publisher that had placed on contract suc-

cessful radio recording and stage personalities." We were referring to his statement, the whole effect of the literature that he planned to negotiate, that he was carrying on. There was one negotiation in February of 1958, and that set the stage for the rest of the proceedings. It wasn't a continual thing. Who were these other active, responsible publishers that he talked to? Not that he ever got a contract with them. The only one we know about, and that's the one we are talking about, is Dallas Turner. There was no future plan.

Contracts were entered into prior to September 18th, the [fol. 1035] date on that exhibit there, but if you will go through them you find this other literature, the correspondence:

"It is my desire to handle it."

As we both understand, and so forth, and then he continued to go out in September of '58—Count 7 and Count 8, September '58.

There are, I think, approximately four or five examples where they went out after the date on the back of the invoice.

Then we talked about that Hominy check. Well, that check wasn't produced that he paid a bill at Hominy. But counsel didn't explain it all or even mention whether or not Stephen Singer placed that order. But it was placed from a motel where Mr. Singer stayed in Los Angeles. That bill doesn't say "stephen" or "mortimer". It just says "Mr. Singer." And the telephone "Axminster 2-" or whatever it is.

Then the position of the defendants that the people got exactly what they asked for, and this was good quality to the records. We are not contesting quality. That's a matter of taste. My personal taste is I like the piano on one song, and maybe on the other song I prefer the Madhatters. It's a question of personal taste. We are saying the inducement, the whole literature considered as a whole, especially your opening literature, misled these people that Ralph Hastings had some standing in the entertainment field, [fol. 1036] that he had some way of getting appearances

for an entertainment group. You remember he was asked the question on cross examination:

"Have you placed many songs with Mr. Turner?"

Mr. Campbell said "many, many," but he said "some." But the question we asked on redirect was "When was that?" "Oh, that was three or four years ago." "Anything to do with Ralph Hastings?" "No."

Counsel stated that the director of recording was Sanford Dickenson. Then the allegation is the arrangers scale of pay, the directors of recordings would be at \$47.50. Mr. Singer's testimony was that all Mr. Dickenson got was \$30.50 for the 78 rpm's. What happened to the rest of that? Royalties!

Leola Thompson, Counts 27 and 28.

We asked Mr. Singer about it. That's the point. The defendant doesn't have to take the stand in a criminal case. If he does take the stand you consider his demeanor and what he produces and what he talks about. He doesn't have to produce his records. But isn't it interesting that those records weren't available, they were in Phoenix?

The Film Tone label. This guide contains record labels. It contains the list of record companies. I don't see any "Film Tone."

Why were these people picked out and not California [fol. 1037] people? When did the government first hear of California people? The last day of the trial. If you examine Exhibit 64 I have tried to put the Los Angeles area at the top, the ones that I thought were in the area. I do not think there are any in the city. Newport Beach, Ontario. Several changes of addresses of military personnel. El Cajon. That's in San Diego. We didn't know about it. How do you find out? You don't have access to their record. How do you know who in California they were mailing to? You select people that you find out about. You find that out through mail or inquiry. "We will contact you."

The letter, Menchaca, after they had him committed to the deal and they offered to refund the money the money wasn't refunded, so Menchaca still bought the record and paid \$94 for the 100 pressings.

Then we gave you all the exhibits we had of these witnesses. We didn't slip one out of a black box for this

witness that would probably impeach the man on a minor point and another one on a different point. We gave you everything we had on these witnesses as related to these companies.

You mean there was no correspondence that criticized the company? I don't even imagine General Electric could claim that.

Then the reference to the business not making money. Was that a gratuitous assumption by counsel? Mr. Singer [fol. 1038] didn't state that. Mr. Singer didn't state that his whole plan was the grandiose thing that eventually one record might hit. He didn't state that. Those questions weren't even asked of him.

How do you tell whether or not it made a profit? You examine the books and records and have an accountant examine them, that's the logical way. So we go with what we have. Mr. Singer testified that approximately 900 to 1,000 people purchased the 78 rpm. That makes 600 to 700 of these that were Madhatter recordings. He stated that \$30.50 went to Mr. Dickenson. That was his salary, and whatever else he could make in it. But he also had to pay the recording studio et cetera. That was his living on that. Whether he made a profit I don't know. \$12.00 for the orchestra arrangement that Mr. Singer thought was additional that he paid. That makes \$42.50 from \$84.50 which leaves \$45.50 times 700 makes \$31,850. He had to pay Rose Zukor and he had to pay rent on a one-room office at Producers Motion Picture Studio, and he had to pay mailing service. How much did that cost? We haven't even covered the Madhatters, or the Ken Starr recordings.

The next point, the 45 rpm's and there were a hundred or so of those. This is a key point: In that opening literature you were not told that the price for you was \$96 but there were going to be three other songs. So it's four times \$96 [fol. 1039] or a total of \$384 that is being paid. And what did Mr. Dickenson get for all of that? Mr. Dickenson was getting \$8 a record. That leaves \$304 to pay the expenses of Rose Zukor and mailing service and rental: And 304 times 100 is approximately 30,400.

We are not including any profit he might make on the Ken Starr recordings.

Now the records of the bank are for 1958 and 1959. There are deposits made only in the first two months of 1959. We don't have the record for 1957. You recall the bank officers stated that they were in storage in Orange County. But the account was opened on July 22nd, 1957, approximately six months in '57. What were the total deposits for 1958? The total deposits for 1958—

Mr. Campbell: That's objected to as not proper argument, if the Court please.

The Court: The bank books are in. You can comment on what they disclose.

Mr. Campbell: But in the absence of any evidence whatsoever as to what those deposits represented—

Mr. Thornton: I am just stating the total of deposits. It's for the jurors to draw whatever inference they want.

The Court: All right.

Mr. Thornton: The total deposits for 1958 were in excess [fol. 1040] of \$75,000. In 1959 they were \$5,040 for two months. We don't know what they were for 1957.

A point was mentioned that this was a cunning type of prosecution. I am a little dumb. I wish people would say all the bad things they want to about me, but don't give me the innuendo. I don't know what you are talking about, because my initials are at the bottom. Any case you cite down there will have my initials on the bottom and the secretary. And at the bottom it was Laughlin E. Waters, and now it will be Mr. Whelan. Is there anything cunning about the U. S. Attorney? Well, sometimes comments like that provoke you to make statements you shouldn't make, so it is better just to shut your mouth, but I do not accept them.

Ladies and gentlemen, there was a very complicated scheme which prevailed throughout the United States, difficult case to gather the evidence on, but in the final analysis I think one of the finest portions of our law is not lawyers to decide whether these people are guilty or not guilty, but it is twelve people like yourself, ordinary people. How do you judge the literature? This case is decided by those four or five main letters that I went through and the circular. Were these people induced into a fraudulent

scheme to invest their money? It is not a question of what the quality of the record was, whether they received royalties. Maybe they wanted it, maybe they would have bought [fol. 1041] it like they bought from Musiemakers if they knew all the facts. But wouldn't you like to know the facts before you spend \$87.50 and \$94? Do you think this was honest, fair dealing? In the ultimate analysis it is lay people like yourself who decide what is criminal fraud, what is going to go through the mail. If this is a legitimate business, no criminal fraud, Mr. Singer ought to get a pat on the back "Go ahead and do likewise. Lots of success." If it is criminal fraud it is your decision to make.

Mr. Campbell: I wish to challenge one statement made by counsel because it also confirms your Honor's recollection, and that has to do with the examination of the witness Hufstedler and his signature.

The Court: Yes.

Mr. Campbell: The testimony goes on.

Mr. Thornton: May I have the page number?

Mr. Campbell: 689.

"Q. Mr. Hufstedler, did you say whether or not that was your signature on that document in front of you?

"A. I don't think it is.

"Q. You say you don't think it is?

"A. No, sir; because I don't ever remember signing a document like that.

"Q. Does it appear to be your signature?

[fol. 1042] "A. It appears to be, yes.

"Q. Will you look at the date of that document?

"Mr. Thornton: The last sentence.

"The Witness: 15th day of July 1958.

"Q. By Mr. Campbell: That is Government's Exhibit—

"The Court: I think the way the question was put it might have misled you. You understand this is a photostat of a document. What you are really asked is, do you remember signing an original like that?

"The Witness: No.

"The Court: You don't?

"The Witness: No, I don't remember signing an original.

"The Court: But the signature looks like yours?

"The Witness: Yes, sir.

"The Court: Well, is it possible that you signed it and just don't remember it?

"The Witness: I don't remember signing the document. It is possible, but it is not probable, because I usually remember what I sign.

"The Court: It isn't signed by anybody who put their initials on it. It purports to be your signature?

[fol. 1043] "The Witness: That's right."

The Court: All right.

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[fol. 1044]

SUPREME COURT OF THE UNITED STATES

No. 898—October Term, 1963

MORTIMER SINGER,

*Petitioner,*

vs.

UNITED STATES.

ORDER ALLOWING CERTIORARI—April 20, 1964

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.